

How will the Department of Labor regulation impact your retirement plan?

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On April 6, 2016, the Department of Labor (DOL) issued a [fact sheet](#) that summarized their highly anticipated “Conflict of Interest” regulation that is sure to affect both qualified retirement plans and IRA’s. Here are, what I consider to be, the 3 most impactful aspects of the new regulations:

1. **“The basic rules governing retirement investment advice have not been meaningfully changed since 1975, despite the dramatic shift in our private retirement system away from defined benefit plans and into self-directed IRAs and 401(k)s. That shift means good investment advice is more important than ever.”**

Why does the DOL think this rule is necessary? The DOL states that because employees are often responsible for directing their own investments, there is a need for a uniform definition for fiduciary advice. Currently, there are a significant number of retirement plan professionals who provide advice but are not fiduciaries to the retirement plan or to your employees. The DOL’s contention is that the lack of fiduciary accountability could result in an employee receiving (and acting upon) advice that they believe was made with their “best interests” in mind, when a non-fiduciary advisor can act under a “suitability” standard as opposed to a “fiduciary” standard. ([Learn more here](#))

2. **“Any individual receiving compensation for providing advice that is *individualized or specifically directed* to a particular plan sponsor (e.g., an employer with a retirement plan), plan participant, or IRA owner for consideration in making a retirement investment decision is a fiduciary.”**

I think what is interesting about what is written here is that this clearly includes advice delivered to the plan sponsor (or retirement plan committee). As already mentioned in item 1, participant advice will be fiduciary in nature, but this further clarifies that a retirement plan advisor that consults with the committee about specific plan provisions or who has oversight over a plans available fund menu, will need to be a fiduciary to the retirement plan as well. If you’re not sure that your advisor is a fiduciary, but they perform (or you expect them to perform) these duties regularly on behalf of your plan, you may wish to learn more about how this new regulation will impact your plan moving forward.

3. **“Being a fiduciary simply means that the advisor must provide impartial advice in their clients best interest and cannot accept any payments creating conflicts of interest unless they qualify for an exemption intended to assure that the customer is adequately protected.”**

If there is the appearance or potential for any conflict of interest, then under this new regulation, the fiduciary must (amongst other things) fully disclose the conflict, explain why the recommendation is in your best interest, and address how they intent to mitigate the conflict on their end. This disclosure, referred to as the “Best Interest Contract Exemption” or “BICE” will more than likely be included in the form of a revised services agreement between you and your advisor.

Please feel free to call or email me if you have questions on how this new regulation will impact your company. Although the “applicability” date for the regulation was deferred until April 10, 2017, it would be a good idea (especially for those who aren’t sure if their advisor is a fiduciary, or if you know they are NOT a fiduciary) to obtain information on how to make sure that you help your employees obtain un-conflicted advice through your plan in the near future.

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Or give him a call at 781.982.6594.

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