

# NEWS YOU CAN USE

## for Advisors and CPAs

### July 2024

## Fiduciary Rule Changes

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In April 2024 the Department of Labor (DOL) finalized a new definition of who qualifies as an investment advice fiduciary and what those individuals must do in order to receive a fee for providing that advice. These rules make changes that advisors need to be aware of to ensure continued compliance with ERISA's requirements.

**What changed?** The new rule expands the services that could result in someone being an investment advice professional. Notably, the expanded list of covered services includes not only "traditional" types of investment advice (such as recommending particular securities or an investment strategy), but now also includes making recommendations regarding:

- Advisability of rolling over, transferring, or distributing assets from a plan or IRA, including:
  - o Whether to engage in the transaction,
  - o The amount, the form, and the destination of such a rollover, transfer, or distribution.
- How plan assets should be invested after a distribution; and
- Advice on selection of other persons to provide investment advice or investment management services to the plan or investor.

A person who provides a covered service for a fee will be an investment advice fiduciary if they either (a) regularly provide professional investment advice and the recommendation is sufficiently individualized or (b) they represent they are a fiduciary.

As plan advisors already know, fiduciary status is important because fiduciaries have certain obligations to participants and are prohibited from receiving a fee from plan assets unless certain requirements are satisfied. The DOL also updated those prohibited transaction exemption requirements in significant ways — including revising the required disclosures and requiring the implementation of certain policies and procedures.

**Practical Impact.** For individuals who have already been providing fiduciary investment advice, the following steps can help ensure compliance with the new rule:

### 1. Identify All Investment Advice Services and Educate as Needed

The DOL rule expanded the types of services that will result in fiduciary status in a number of ways. Advisors should carefully evaluate and identify when they may be



providing these services to ensure they meet the DOL requirements.

If the advisor does not want to be acting as a fiduciary in these instances, then care should be taken to avoid meeting the definition. One clear way to avoid fiduciary status is to avoid making a covered recommendation. Therefore, advisors may wish to ensure employees understand the distinction between education and recommendations so that they stay well clear of any potential fiduciary status when interacting with participants about distributions or referring clients to other service providers.

### 2. Ensure Compliance by the Applicable Deadlines

The new, expanded definition of fiduciary investment advice will take effect September 23, 2024 (absent any court order delaying the effective date). However, most of the requirements under the revised prohibited transaction exemption are delayed to September 23, 2025, with the exception of certain impartial conduct requirements. Thus, identification of fiduciary services is critical before the 2024 deadline, but advisors will have another year to fully comply with the most onerous aspects of the prohibited transaction exemption.

The fiduciary rule is complex, and advisors should act quickly to ensure continued compliance with ERISA when working with ERISA retirement plans and participants.

## Reminders

- **July 29, 2024:** Deadline to distribute a summary of material modifications (SMM) to participants for plan changes (unless already included in an updated SPD).
- **July 31, 2024:** Deadline to file the Form 5500 or request for extension of time to file.
- **July 31, 2024:** Deadline to file the Form 5330 (reporting excise taxes) or request for extension of time to file.