

# Fiduciary Rule Will Affect Service to Plan Sponsor Clients

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**Participant education efforts are also impacted.**

When the Department of Labor's (DOL) fiduciary rule proposal came out last year, there was some concern that it would affect plan sponsors by requiring Best Interest Contracts (BICs) from advisers, even with one-time projects, such as defined benefit (DB) plan annuity purchases, that it would affect retirement education for participants, and even affect advice relating to health savings accounts (HSAs).

The [final rule](#) released this week, made some important changes in response to these concerns.

In a statement, Rich McHugh, vice president of Washington Affairs for the Plan Sponsor Council of America (PSCA), said, "Based on an initial review, it appears that the DOL has made some changes in the rule that should be helpful with respect to providing needed investment education to retirement plan participants, reforming the best interest contract exemption and making the rule more helpful to small employers."

In discussing the final rule, Labor Secretary Thomas Perez said, "[F]or firms that have millions of existing customers that would require a BIC under the final rule, there are also changes. Unlike in the proposed version, firms can now simply send a notice that tells these clients that the firm has taken on new obligations for them as a result of the new fiduciary standard. An email or letter will suffice when it comes to alerting existing customers of the change."

Robyn Credico, North America leader of defined contribution consulting at Willis Towers Watson in Arlington, Virginia, explains that under the final rule, recommendations to plan sponsors managing more than \$50 million in assets (vs. \$100 million in the proposed rule) will not be considered investment advice if certain conditions are met and hence will not require an exemption. There must be a written validation that the plan sponsor has the wherewithal to make investment decisions.

However, for plans with \$50 million in assets or less, the plan sponsor and adviser will have to enter into a BIC explaining there are no conflicts of interest and the appropriate fees, Credico says.

## **NEXT: Education and rollovers**

As for the one time use of an adviser for specific projects, such as DB risk transfer, the rule remains the same. These advisers are considered fiduciaries. Lynn Dudley, SVP, global retirement and compensation policy at American Benefits Council in Washington, D.C., explains that the fundamental [redefinition of fiduciary that was put forth in the rule proposal](#) still stands in the final rule. The previous five-part test for determining if a person or entity is providing fiduciary investment advice is gone, eliminating the "on a regular basis" standard, she tells PLANSPONSOR.

Credico says requirements about participant retirement investment education have been improved. Advisers, plan sponsors, or providers holding retirement plan education meetings can talk about the investments in the plan. "This was not allowed before," she points out.

Dudley explains that specific funds can be mentioned, but only if each fund is named. For example, if a participant asks, "Can you tell me about the small cap fund I'm invested in and whether most people my age use that fund," the plan sponsor, adviser or provider can respond, but must talk about every small cap fund in the plan. "You can't suggest whether the participant is doing right or wrong by investing in that fund," she says.

The DOL rule exempted health and welfare plans from its final rule requirements except where they have an investment component, Dudley adds. So if an HSA has an investment component, anyone giving advice about those investments will need to enter into a BIC with the plan sponsor or participant.

According to Credico, advisers helping with rollover decisions are subject to BICs.

"Providers and adviser will have to provide participants comfort that there are no conflicts of interest or receive a document about conflicts, and the adviser fee must be independent of the investments selected," she says.

Even if a participant has been working with the plan sponsor's adviser for years, at the point of rollover, there has to be a BIC. "It's a whole new relationship once the participant takes money out of the plan," Credico says.

#### **NEXT: What should plan sponsors do?**

Credico recommends that plan sponsors with more than \$50 million in plan assets look at the education provided to participants and the advice they and participants receive to make sure they meet the new requirements. For advice solutions, someone should be identified as a fiduciary.

She also recommends these plan sponsors have an investment committee with the appropriate people in place. To get the exemption, they have to make a statement that they have appropriate people in place to make investment decisions.

As for education, Dudley says in group meetings, there will be a lot of caveats. More general information will be offered and there may be a reluctance to answer individual-specific situations, but educators can direct participants to where they can find answers.

Credico adds that plan sponsors should make sure they are not responsible for plan advisers once a participant takes a distribution. "Make sure you're not endorsing the plan's adviser. Make a written communication that once a person leaves a plan, the plan sponsor is not responsible for what the employee does with assets," she says.

Credico concludes that as sponsors, providers and advisers review the new rule more thoroughly, there will be more questions. But, for plan sponsors it seems the new rule is not as much a big deal as the proposal.

"It's a lot to process and a big change, and people are figuring out the best way to comply, but the DOL has made it workable," Dudley says.