



DOL's Fiduciary Rule: What You Should Do Today to Remain Compliant

©2003 – 2017 Multnomah Group, Inc. All Rights Reserved.

Agenda

- Fiduciary Rule Overview
- Impact of the Fiduciary Rule on:
 - service providers to retirement plans and IRAs
 - plan sponsors of retirement plans
- Action Items
- Fate of the Fiduciary Rule

Components of the Fiduciary Rule

- Revised definition of fiduciary under ERISA Section 3(21)(A)(ii)
- Activities that are excluded from the definition of advice/recommendation
- Inclusion of a Best Interest Contract Exemption (BICE)

ERISA Section 3(21)

A person is a fiduciary if he/she:

- Exercises discretion over the management of the plan or plan assets
- Renders investment advice to a plan or plan participant for compensation
- Has any discretionary authority in the administration of the plan

Advice under the Fiduciary Rule

Pre-June 9 Test for Investment Advice:

To constitute investment advice, a financial professional must meet all five parts:

1. About the value of or advisability of investing in securities or other property;
2. On a regular basis;
3. Pursuant to an agreement or arrangement with the plan;
4. With the understanding that the advice will serve as a primary basis for investment decisions; AND
5. That is individualized to suit the needs of a specific plan.

Post-June 9 Test for Investment Advice:

Rendering investment advice for a **fee** (direct or indirect), which is per an agreement or understanding, and based upon the needs of the plan or participant, **or** where the communication is specifically directed to the plan or participant, **and** where investment advice constitutes:

- Recommendations as to how to invest assets (including IRAs) and/or
- Recommendations as to who should invest the assets.

Activities that are *not* advice

1. Transactions with Independent Plan Fiduciaries with Financial Expertise
2. Employees to Plan Sponsors
3. Platform Providers
4. General Communications
5. Investment Education
6. Swap and Security-based Transactions

Note that certain disclosures and exceptions apply!

Impact of the Fiduciary Rule on Service Providers

- Many more financial services professionals are considered fiduciaries than ever before
 - nearly all communications about investments are investment advice
 - recommendations regarding IRAs are now investment advice
- Recordkeepers seek to use exceptions to the Fiduciary Rule to avoid being a fiduciary to the plan
 - \$50 million threshold
 - accompanied by an acknowledgment in many cases

Impact of the Fiduciary Rule on Plan Sponsors

The role of the plan sponsor in monitoring participant education and participant advice under the Fiduciary Rule has not changed...

- Plan Sponsors have the same role in that they must prudently select and monitor service providers:

As with any designation of a service provider to a plan, the designation of a person(s) to provide investment educational services or investment advice to plan participants and beneficiaries is an exercise of discretionary authority or control with respect to management of the plan; therefore, persons making the designation must act prudently and solely in the interest of the plan participants and beneficiaries, both in making the designation(s) and in continuing such designation(s).

- Plan Sponsors should monitor interactive investment materials and asset allocation models to ensure they are not bias toward the service provider

Action Items for Plan Sponsors

- Understand the current arrangement the plan has with service providers
 - ✓ Locate the plan's providers' current 408(b)(2) disclosure(s) and agreement(s)
 - ✓ Review and understand the plan's providers' 408(b)(2) disclosure(s) and agreement(s)
- Understand how the Fiduciary Rule affects the plan's providers and how any arrangements you may have with providers may change as a result
- Review the Fiduciary Rule and understand any new obligations you may have (e.g. ongoing review of educational materials)
- Prepare yourself and your committee for novel disclosures and new agreements

Service Provider Due Diligence Review

Review Item	Advisor / Consultant	Recordkeeper	Third Party Administrator	Other
Identification of the plan's covered service provider(s) under 408(b)(2)				
Identification of fiduciary status for each of the plan's covered service provider(s) at the plan level				
Identification of fiduciary status for each of the plan's covered service provider(s) at the participant level				
Determination of whether arrangement with the covered service provider(s) changed as a result of the Fiduciary Rule				
Determination of whether new contract is required at the plan level as a result of the Fiduciary Rule				
Determination of whether new contract is required at the participant level as a result of the Fiduciary Rule				
Review of service made available from covered service provider(s) to participant for objectivity, no bias (if applicable)				

Service Provider Due Diligence Review

Review Item	Advisor / Consultant	Recordkeeper	Third Party Administrator	Other:
Identification of the plan's covered service provider(s) under 408(b)(2)	Multnomah Group			
Identification of fiduciary status for each of the plan's covered service provider(s) at the plan level	Fiduciary			
Identification of fiduciary status for each of the plan's covered service provider(s) at the participant level	Non-fiduciary			
Determination of whether arrangement with the covered service provider(s) changed as a result of the Fiduciary Rule	No			
Determination of whether new contract is required at the plan level as a result of the Fiduciary Rule	No			
Determination of whether new contract is required at the participant level as a result of the Fiduciary Rule	No			
Review of service made available from covered service provider(s) to participant for objectivity, no bias (if applicable)	Not applicable. Multnomah Group is not providing a participant service.			

Fate of the Fiduciary Rule: What's Next?

- Timeline
 - Applicability Date for the Fiduciary Rule was June 9, 2017
 - expanded definition of fiduciary
 - established impartial conduct standard
 - Applicability Date for the remaining components of the Fiduciary Rule is scheduled for January 1, 2018
- What may derail the January 1, 2018 applicability date?
 - DOL Issued RFI
 - SEC's fiduciary standard
 - Potential collaboration between the SEC and DOL
- Lack of DOL Enforcement (see Field Assistance Bulletin No. 2017-02)
 - but litigation concerns remain

Disclosures

Multnomah Group, Inc. is an Oregon corporation and SEC registered investment adviser.

Any information and materials contained herein or on our website are provided for general informational purposes only and are not intended to be comprehensive for any particular subject. Multnomah Group utilizes information from third party sources believed to be reliable but not guaranteed, and as a result, information is provided to you "as is." We do not represent, guarantee, or provide any warranties (either express or implied) regarding the completeness, accuracy, or currency of information or its suitability for any particular purpose. Multnomah Group shall not be liable to you or any third party resulting from any use or misuse of information provided.

Receipt of information or materials provided herein or on our website does not create an adviser-client relationship between Multnomah Group and you. Multnomah Group does not provide tax or legal advice or opinions. You should consult with your own tax or legal adviser for advice about your specific situation.