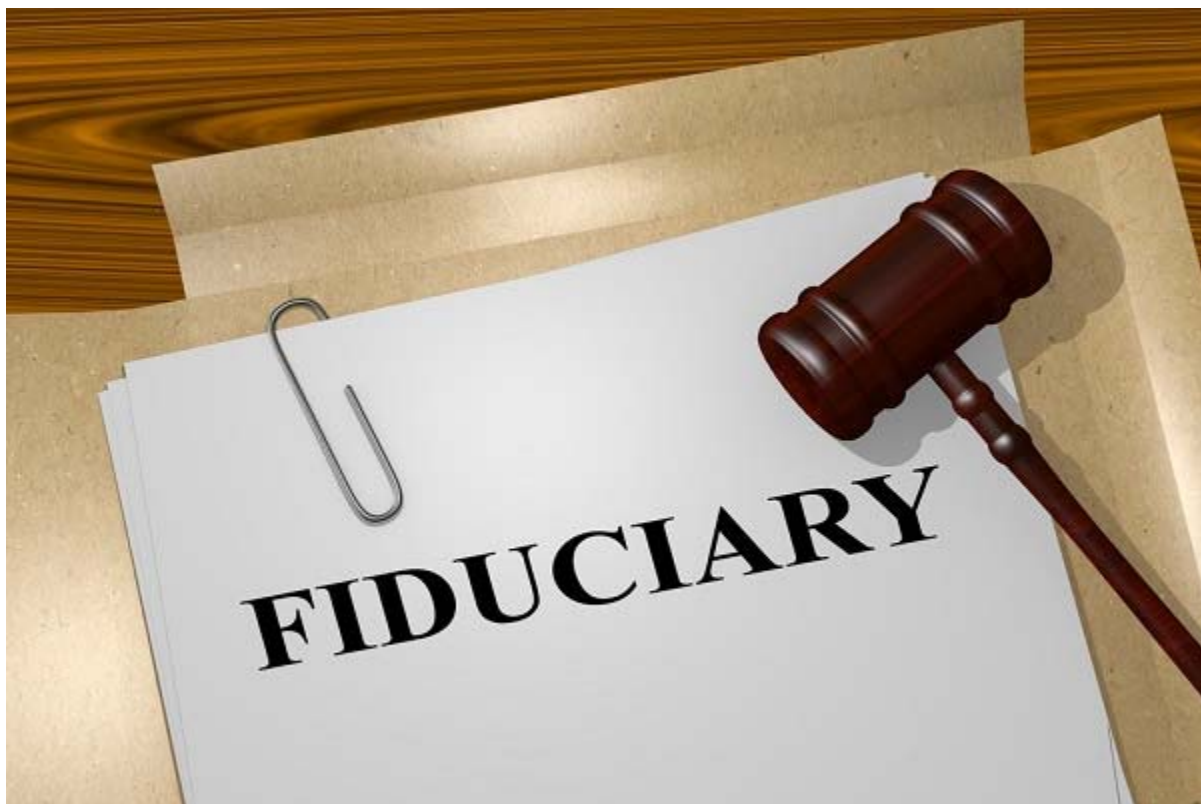


DOL fiduciary rule: Here faster than we think

Key provisions of the DOL fiduciary rule will still significantly impact the landscape of investment advice and fee structures.

By **Frederic Slade** | March 28, 2018 at 07:37 AM



Despite court rulings and delays, the DOL fiduciary rule will still have an impact on the industry. (Photo: Shutterstock)

The Department of Labor's (DOL's) long-awaited fiduciary rule (Rule) was introduced on June 9, 2017. After fits and starts, its full implementation has been delayed until July 1, 2019.

However, several key provisions have already kicked in and will apply in some form to all retirement benefit plans. Though the old rules were due to be

updated, the new Rule is complex. It can perhaps be looked at as having pillars, with fiduciary advice forming the base, and with other provisions and exemptions building upon it.

First, the Rule expands the definition and scope of fiduciaries to include broker/dealers and Registered Investment Advisers (RIAs). The Rule applies to those providing advice for Individual Retirement Accounts (IRAs) as well as to plan fiduciaries. According to the Rule, fiduciaries include persons who make recommendations for a fee or other compensation (direct or indirect) to a plan fiduciary, plan participant or IRA owner with respect to investment advice (e.g. buy/sells, rollovers, manager selection).

Second, what is considered a recommendation under the Rule? As defined by the DOL, a recommendation is a suggestion for a given course of action. This definition covers a broad range of advice; however, there are several specific categories that are not considered fiduciary advice recommendations. These include: investment education; platform providers (with disclosure and analysis of investment options); and general communications such as research, newsletters and prospectuses.

Third, given the broad application of “fiduciary” status to investment advisers and brokers, does this mean that all commissions and variable fees are disallowed? Although the bar is high, and required documentation may be extensive, an allowance to these types of fees is made under the Rule, so long as an advisor provides non-discretionary advice and adheres to the DOL’s Best Interest Contract Exemption (BICE). The BICE requires that advice be in the “best interest” of the retirement investor, which includes the standards of prudence and loyalty. Compliance rules for BICE differ for ERISA and non-ERISA Plans.

In summary, key provisions of the DOL fiduciary rule are already in place and are significantly impacting the landscape of investment advice and fee structure. The main building blocks of the Rule are fiduciary advice, recommendations and Best Interest Contract Exemption. Fiduciaries will therefore need to review and potentially update their investment policies, procedures, contracts and compensation/fee structures.

See Wagner, Marcia S. Esq. “[The New Fiduciary Rules: What Do You Need to Know and Do Now?](#)” The Wagner Law Group Web PowerPoint Presentation, 2017.

See Gorman, Maureen and Lennine Occhino. “[DOL Fiduciary Rule: Impact and Action Steps](#),” Harvard Law School Forum on Corporate Governance and Financial Regulation, July 21, 2017.

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