WINIECKI WEALTH MANAGEMENT

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WWM Client Newsletter

New Fiduciary Retirement Rule

After years of work and comments, the Department of Labor released 1,000 pages of industry-changing new rules regarding 401(k) plans and IRAs. Some of Its many points include

- 401(k) and IRA advisors will all be held to a fiduciary standard
- Earning commissions and selling proprietary products are still allowed
- Recommending moving from a 401(k) plan to an IRA is fiduciary advice
- Investors may have a new cause of action

For an overview of the new rule, click

Here for the Dept. of Labor's "Fact Sheet"

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401(k) and IRA advisors will all be held to a fiduciary standard

Surprise! Your Wall Street and bank advisors did not have to act in your best interest all these years. They could sell you any “suitable” product, even if it wasn’t very good or cost more than similar products.

Now, however, when it comes to your retirement plans, advisors must act as fiduciaries. In our eyes, that means always putting your client’s interests before your own, not being incentivized to sell one product over another, avoiding conflicts of interest when possible and resolving unavoidable conflicts of interest in the client’s favor.

At over 1,000 pages, though, the rule fails to offer an easy understanding of fiduciary behavior. In short, the rule provides exemptions and exceptions that may be turned into loopholes.

Earning commissions and selling proprietary products remain acceptable

Advisors can still earn commissions and recommend proprietary product to their clients. To do so, though, the new rule requires a lot more paperwork on the advisor’s part and to disclose conflicts of interest and of fees. Given the general failure of the DOL’s Fee Disclosure Rule under ERISA Sec. 408(b)(2) to educate 401(k) Plan Sponsors on the fees they pay, there is little to indicate individual investors will find, read or understand such disclosures.

While the rule prohibits firms from incentivizing advisors from using proprietary products, such incentives will of course exist. With over 1,000 pages of rules and regulations, it will take years of litigation to discern what the loopholes are.

Recommending a move from a 401(k) plan to an IRA is fiduciary advice

An advisor provides fiduciary advice if he or she recommends changing a client's account type or fee structure. For example, moving from a 401(k) to an IRA is a fiduciary recommendation. So is moving from a commission-based fee to a level fee.

As a result, advisors will need to show that recommending such moves are in a client's best interests. To make that decision, an advisor should examine (among other things) fees, conflicts, service and performance. Obtaining this information may be difficult - fees are especially hard to determine whether tied to an IRA or a 401(k) plan. Finally, many salespeople would appear ill-suited to make the shift from selling to determining the best investment for a client.

Can a client, without an advisor recommendation, decide to move their money? How advisor conversations are structured and documented may be key.

Investors may bring breach of contract claims against advisors

When providing advice to an IRA owner, a financial institution must commit to certain protective conditions as part of an enforceable contract. "ERISA plan investors will be able to rely on their advisers' fiduciary acknowledgement to assert their rights under ERISA's statutory protections. If advisers and financial institutions do not adhere to the standards establishes . . . , retirement investors will have a way to hold them accountable – either through a breach of contract claim (for IRAs and other non-ERISA plans) or under the provisions of ERISA (for ERISA plans, participants, and beneficiaries)." DOL Fact Sheet p. 5 of 6.

The new complex rule provides few bright-line rules, new hoops to jump through and many new loopholes financial institutions can use to avoid acting as a fiduciary. Wait and see how it affects retirement America and advisors who currently sell.