

Fiduciary Corner

August 2016

New Fiduciary Regulation - Impact on Plan Sponsors

By Scott Fremer, CEBS and James R. Sotell, AIF

www.ComperioRC.com

800-479-9869

Many advisors/consultants are currently not acknowledging their fiduciary status but this is set to change effective next year (April 2017). "

On April 6, 2016, the U.S. Department of Labor issued the **new fiduciary rule** that will mean all advisors to retirement plans will now be considered fiduciaries. Many advisors/consultants are currently not acknowledging their fiduciary status but this is set to change effective next year (April 2017). Plan Sponsors should be aware of this change and what steps they should take in addressing their current advisor/consultant relationship.

The goal of the next two editions of Fiduciary Corner will be to provide you with a road map for the evaluation of your existing advisor/consultant relationships, based on our experience conducting searches for large 401(k) plan sponsors.

All plan sponsors should begin the evaluation process by asking the following questions to their advisor/consultant:

1. How do the new fiduciary rules affect our relationship? Are you currently signing on as a fiduciary for the plan? If yes, do we have a written agreement in place? If no, when will we have a written agreement

outlining your services and that you take on fiduciary status?

2. Are there any new disclosures and agreements that need to be in place before the regulations effective date?
3. Since making a recommendation on a rollover to an employee will be a fiduciary activity by you as an advisor/consultant, how will you handle that?
4. Is there any additional disclosure you will need to provide the Committee or participants?
5. What training/education on the new regulations will you be providing the Committee and other plan fiduciaries?

The New Fiduciary Rule and its impact on Plan Sponsor relationships with advisors/consultants

Once the new regulation takes effect (beginning April 10, 2017), any advisor/consultant that makes investment recommendations or suggestions to a retirement plan (including an IRA) will now be considered a fiduciary advisor and must engage in a prudent process and be required that advice is in the client's best interest. The final regulation will cause many investment



advisors, who had previously avoided fiduciary status, to become fiduciaries. New fiduciaries who advise ERISA plans and their participants will become subject to ERISA's fiduciary standards of conduct and its prohibited transaction rules. Thus, all of those fiduciaries will have to avoid engaging in conduct that creates a prohibited transaction – such as receiving compensation that creates a conflict of interest – unless that conduct falls within a prohibited transaction exemption.

The new regulation presents an opportunity for many plan sponsors to review the organizational structure and retirement plan experience of existing advisory relationships in order to determine the potential for conflicts of interest. Answering the following questions will provide plan fiduciaries with a clearer picture of an advisors' business model, compensation practices, rationale for serving retirement plans (many advisors provide plan level services in order to have access to plan participants for rollover and other financial product sales opportunities) and the potential for conflicts.

- Is your firm registered as an advisor with the SEC under the Investment Advisor Act of 1940 and functions as a fiduciary?
- Do you have any affiliation with a broker dealer or any other financial Institution? If yes, please explain that relationship.
- Has your firm and/or any member of your firm ever been investigated, fined, disciplined, and/or suspended by the SEC, FINRA, any regulatory agency or stock exchange, association, or governmental entity? If so, please describe.

- Does your organization or related company have relationships with and/or receive compensation from money managers, broker dealers or service providers for any reason or that you recommend, consider, or make mention of for consideration? If so, describe those relationships.
- Does your organization or related company have any conflicts of interest as relates to providing investment advisory services to our plan? Do you have policies or procedures to address conflicts of interest with relationships or payments from being considered when providing advice?
- Please provide a breakdown of revenue your firm receives from retirement plan consulting versus revenue from rollovers and wealth management services.
- Please provide the percentage of revenue received by the firm derived from fees and the percentage derived from commissions.

In addition to the questions, there are several resources available to anyone that wishes to conduct due diligence on an advisor. We would parallel this to conducting a background check on a new employee. The resources can provide insight into an advisor's affiliations, whether they are dually licensed and can accept commissions and any history of violations. A great resource to begin your investigation is the SEC Advisor Public Disclosure Website:

<http://www.adviserinfo.sec.gov/IAPD/Default.aspx>

Our next issue will address the new disclosure and agreements that need to be in place by April 2017. Our goal is to address the new fiduciary rule from the Plan Sponsor vantage point and what is important for them to know .

The new regulation presents an opportunity for many plan sponsors to review the organizational structure and retirement plan experience of existing advisory relationships