

# DOL FIDUCIARY RULE WHAT'S NEXT?

How to prepare now  
for the DOL's new Fiduciary Rule



**The first phase of the Department of Labor's new fiduciary rule goes into effect on June 9, with full implementation slated for January 1, 2018.**

While the Labor Department is soliciting public comment on the rule and has declared it won't be enforcing the rule for the remainder of the year, including any IRS tax penalties in case of violation, the DOL's stated expectation is that advisors should be "working diligently and in good faith to comply with the fiduciary duty rule."

In fact, many industry experts say while the current scrutiny of the rule may lead to a relaxation of certain elements, such as client disclosure requirements, the spirit of the rule will likely endure. Indeed, investor preferences for transparency, objectivity and lower-cost investments will continue to shape the industry.

What does this mean for advisors? What, if anything, should you be doing now? Should you start to adjust your operations and procedures to comply with the new rule? Here are seven ideas to consider that may help strengthen your business and reduce your exposure to risk as the new regulations get fully implemented.

## HOW TO PREPARE FOR THE NEW FIDUCIARY RULE

### **Develop new disclosure agreements.**

While the new rule doesn't ban commissions or revenue sharing, advisors who sell commission-based products or investments for retirement accounts will need to provide clients with a new disclosure agreement, called a Best Interest Contract Exemption, or BICE.

The BICE pledges that the advisor will act in the client's best interest and only earn "reasonable" compensation. "Reasonable" compensation is not the lowest possible compensation but compensation that is not excessive and is based on the going market for services rendered.

All compensation for these commission-based products and investments must be clearly spelled out in the BICE, which then must be signed by clients when they open an account. A BICE may also be required to document why a rollover from a 401(k) plan to an IRA under a level-fee arrangement is in the client's best interest if the fees for managing the new IRA will be greater than the existing plan's fees.

The new DOL rule does include a grandfathering clause covering investments that were made prior to the "applicability date" of the contract. Investments

## WHAT FALLS UNDER THE NEW FIDUCIARY RULE

The new rule applies to clients' retirement accounts, and the recommendations, strategies and products you provide related to them, including:

- IRAs
- Defined contribution plans – 401(k) plans, 403(b) plans, employee stock ownership plans, Simplified Employee pension (SEP) plans and savings incentive match plans (Simple IRAs)
- Defined benefit plans
- Advice given on whether to roll a 401(k) balance over into an IRA
- Recommendations on how retirement assets should be invested

## WHAT DOES NOT FALL UNDER THE NEW FIDUCIARY RULE

General client communications, investment education and simply making a platform of investment options available to clients are not subject to the fiduciary rule, including:

- Taxable transactional accounts
- Accounts funded with after-tax dollars, even if earmarked for retirement
- Education given to clients, such as general investment advice
- Answers to client inquiries about a specific product or investment
- Interactive investment materials such as questionnaires and worksheets that are designed to help investors evaluate their options



and advice made after this date will be subject to BICE provision. Under the rule, there are currently minimal disclosure requirements for existing clients with existing products. Typically, they can agree by negative consent with no signature required.

### Review existing client accounts.

Advisors may want to review each client account and determine whether the needs of the client can still be met under the existing account structure or whether a change would be in the client's best interest. Clients who are strictly in level-fee accounts may be fine. If you are dually registered and you have clients in commission-based accounts, you may want to consider whether it makes sense to transition them into level-fee accounts.

In addition, consider your smaller accounts. Will the requirements of the new rule make them unprofitable? You might be able to address smaller accounts by using a model-based platform where you can make trades and rebalance portfolios at the model level, not at the account level. Or, you may want to consider a different investment model, such as a digital trading account.

### Review your pricing and fees.

You may want to review your fees to make sure they are reasonable and consistent with current industry pricing. Consider whether your pricing is consistent with the level of service you are providing. You may want to document the actual total charges paid by your clients – all compensation paid to advisors for all activity related to each client – and not just rely on your fee schedules. This calculation may require aggregating across multiple accounts. Then you can compare these numbers to industry standards to document that your charges are reasonable.

As you review your firm's compensation policies, you may want to avoid variable compensation, progressive compensation and any links between compensation and production. You may also want

to institute a firm-wide policy prohibiting any contests or rewards based on production.

**Review your product offerings.**

For retirement accounts, you may want to re-consider any investments or products that now carry a higher level of risk because of their compensation structures. You'll want to verify you're using the appropriate product tools you need to build "best-interest" retirement portfolios for your clients.

**Make sure adequate record-keeping documentation tools are in place.**

The fiduciary rule requires you to determine, demonstrate and document your advice when working with clients on their retirement accounts. You may want to review your workflows to ensure they adequately archive client interactions, conversations and transactions. Your process should enable you to fully document your recommendations and conversations with clients, outlining the specific reasons why your recommendations are in the best interests of your client.

When it comes to retirement portfolio construction, you may want to make sure your proposals and Investment Policy Statements detail for clients the thought process behind your recommendations and how every investment is part of a long-term plan designed to help them pursue their financial objectives.

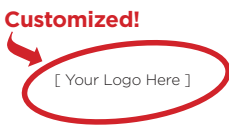
**Review and upgrade your technology.**


Having the right technology in place can reduce your costs and improve your efficiency. And it can play an important role in ensuring your fiduciary responsibility. The right technology platform can:

- Help match appropriate investment strategies to clients and document the rationale behind such recommendations.
- Help accurately profile and document a client's risk assessment and subsequent recommendations.

## How Our Fiduciary Standard Protects You

Customized!





You may have heard media reports about a new fiduciary rule for retirement accounts that President Trump has called for a review of just two months before it was to go into effect. Understandably, you have questions about how this might impact your accounts. The rule was designed to ensure recommendations made by financial advisors to their clients regarding their retirement accounts are always made in the best interests of the client without any conflicts of interest.

The good news is that doesn't affect your accounts at all. As a Registered Investment Advisor, we are already under the highest fiduciary standard—so enacting the rule, changing it, or possibly rescinding it doesn't change our status. We have had this higher standard in place all along and will continue to do so. It's always been part of our DNA.

As your financial advisor, we have been serving you as a fiduciary all along

A "fiduciary" who manages an investor's assets has a legal and ethical obligation to put the investor's interests first. That means helping the investor make decisions in his or her best interests. This fiduciary standard has always been at the core of our firm's mission to our clients.

Here's how we protect you and your investments:

- **We always put your needs first.** We are committed to the highest professional and personal standards, and this commitment remains as strong as ever. Our sole focus is on your financial needs and goals and how we can best help you pursue them.
- **We always act in your best interests.** We are committed to putting your needs and goals before those of our firm. We strive to avoid any conflicts of interest, and if they arise and are unavoidable, we disclose these to you immediately. We provide a high level of transparency around any fees or expenses associated with your accounts, so that you always know what you own and what you're paying for it, so there are never any surprises.

*Continued on the reverse*

With all the media attention around the new DOL fiduciary rule, your clients may have questions about your standard of care. Trust Company of America has developed this customizable marketing flyer you can use communicate how your fiduciary standard protects them.

- Help provide immediate access to a complete history of all transactions and account changes, including client acknowledgements of account preferences, requests and changes.
- Help ensure that accounts of all sizes receive a consistent investment process, ensuring documentation requirements are met.
- Provide clients with a high level of transparency to review all account and performance documents and any associated fees.

## **Develop client-facing education materials that explain the rule and its benefits.**

Clients and prospects are likely confused by all the media coverage surrounding the fiduciary rule. They have questions about your standard of care. They may be wondering how your firm adheres to the best-interest standard and whether recent new rulings will impact their accounts.

Consider taking this opportunity to address the new fiduciary rule and what it means to be a fiduciary. A smart marketing approach can help reinforce the value you bring to the relationship.

At TCA, we can provide you with a free customized client-facing flyer that can be branded to your firm and help explain to clients your role as fiduciary. This tool helps to introduce the subject and can highlight your firm's commitment to objectivity, transparency and always putting clients' best interests first. Once developed, this messaging can also be included on your firm's website. For more details on this customizable marketing tool, contact us today at **1-800-955-7808** or email **[learnmore@trustamerica.com](mailto:learnmore@trustamerica.com)**.

## **Align Yourself With The Right Partner**

Planning for the new fiduciary rule may present a series of challenges for your firm. However, by working with the right partner and using the right technology platform, you can ensure compliance with the new rule, and at the same time, position yourself for future growth and profitability.

Trust Company of America (TCA) is an entirely independent custodian, providing a conflict-free platform with no advisory network, fund families or investment advice to complicate the relationship. We give advisors the freedom to act exclusively in clients' best interests.

- TCA's Liberty platform enables you to match appropriate investment strategies to clients and document the rationale behind such recommendations.
- Liberty provides immediate access to a complete history of all transactions and account changes, including client acknowledgments of account preferences, requests and changes.
- TCA's technology enables accounts of all sizes receive a consistent investment process, ensuring documentation requirements are met.
- You can manage small accounts more efficiently and more profitably by managing and trading accounts at the model level (instead of account level) and rebalancing your entire book of business in just a few clicks.

**To learn more about how TCA can support your role as a fiduciary, contact us today by emailing [learnmore@trustamerica.com](mailto:learnmore@trustamerica.com), call 1-800-955-7808 or visit [www.trustamerica.com](http://www.trustamerica.com).**

### **About Trust Company of America**

Trust Company of America (TCA) is the only independent RIA custodian offering fully integrated real-time technology, consultative services and back office support exclusively to RIAs. Since 1972, TCA has been a dedicated champion of RIAs, committed to personally helping them optimize their portfolios, streamline their business processes and achieve their full potential — all without competing for their clients. Visit [trustamerica.com](http://trustamerica.com) to learn more.

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