



## Department of Labor Issues New Fiduciary Rule

### Previous Definitions

The new definition of an investment fiduciary replaces a five-part definition from 1975 which said fiduciary advice needed to:

- be provided on a regular basis;
- be related to purchasing, selling, or valuing securities or other property for a fee;
- be individualized;
- serve as a primary basis for decision-making; and
- be pursuant to a mutual understanding between parties.

In the new rule, these provisions have been reworked. This broadens the impact of the new rule to include many transactions that were not covered under the 1975 guidance, such as rollovers from workplace retirement plans to individual retirement accounts (IRAs), recommendations regarding many commonly purchased retirement annuities, and recommendations to plan fiduciaries.

### How This Impacts CAPTRUST Clients

CAPTRUST already serves as a fiduciary when providing investment advice to retirement plan sponsors and participants. Therefore, this rule does not change how CAPTRUST interacts with its clients, nor does it change the services CAPTRUST provides to retirement plan sponsors or retirement plan participants.

### The New Fiduciary Rule

The 476-page Retirement Security Rule defines an *investment fiduciary* under the Employee Retirement Income Security Act (ERISA) as a person who renders investment advice for a fee or



other compensation, direct or indirect, under one of the following contexts:

1. The person either directly or indirectly (e.g., through or together with any affiliate) makes professional investment recommendations to investors on a regular basis as part of their business, and the recommendation is made under circumstances that would indicate to a reasonable investor that the recommendation:
  - a. is based on review of the retirement investor's particular needs or individual circumstances;
  - b. reflects the application of professional or expert judgment to the retirement investor's particular needs or individual circumstances; and
  - c. may be relied on by the retirement investor as intended to advance the retirement investor's best interest; or
2. The person represents or acknowledges that they are acting as a fiduciary under Title I of ERISA, Title II of ERISA, or both, with respect to the recommendation.

Given that the rule defines investment advice fiduciaries, it generally applies to service providers like recordkeepers, financial advisors, and investment managers, as opposed to retirement plan sponsors.

One new element of the final rule is that communications from employees of the plan sponsor—even if they could be interpreted as investment recommendations—would not cause employees to be defined as investment advice fiduciaries so long as those employees are not investment professionals.

The final rule also contains a provision that investment education can occur without subjecting anyone to ERISA fiduciary status.

Plan sponsors should be aware that service providers who currently provide investment recommendations, including IRA rollover advice, to their plans or plan participants could be subject to the new rule. Additionally, service providers that currently deliver education to participants may need to reevaluate their processes, services, and product offerings under this new rule.

For more information about this rule or other recent legislative and regulatory changes that may impact retirement plan sponsors, contact a CAPTRUST financial advisor.

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