



ERISA Fiduciary Advice After Vacated 2024 Retirement Security Rule

The 1975 five-part test framework reinforces that not every party interacting with plan participants is acting as an ERISA fiduciary. In this environment, plan fiduciaries should focus on understanding who is providing advice, in what capacity, and how potential conflicts are identified and managed.

Overview

With the 2024 Retirement Security Rule removed from the *Code of Federal Regulations*, determinations of fiduciary responsibility for participant investment advice, such as rollover recommendations, have reverted to the DOL's original five-part test.

Under the five-part test framework, a person is considered an ERISA investment advice fiduciary only if all five elements are satisfied, or if fiduciary responsibility is explicitly established by contract:

1. The advice relates to investments.
2. The advice is provided on a regular basis.
3. The advice is given pursuant to a mutual agreement or understanding.
4. The advice is intended to serve as a primary basis for investment decisions.
5. The advice is individualized to the plan or investor.

This means fiduciary status is not automatic and may vary depending on the nature, frequency, and context of the interaction.

Regulatory Uncertainty Has Increased, Not Decreased

Although vacating the rule restores the original five-part test, it does not provide long-term certainty around standards of care or the management of conflicts in retirement advice. Over the past decade, fiduciary definitions and expectations have shifted repeatedly through a series of court decisions and regulatory initiatives, reinforcing that reverting to an older standard does not eliminate

the potential for future change.

While the DOL has indicated that it has no immediate plans to pursue replacement regulations, future changes remain possible under a new administration. As a result, plan fiduciaries should expect continued discussion of participant-level advice, particularly as it relates to rollovers and distributions.

Practical Considerations for Plan Fiduciaries:

1. Understand who is interacting with plan participants and in what capacity.
2. Identify which service providers engage directly with participants.
3. Clarify when those interactions fall within the ERISA fiduciary standards of care and when they do not.
4. Review agreements and disclosures.
5. Confirm that fiduciary roles and responsibilities are clearly documented.
6. Review how compensation arrangements and potential conflicts related to recommendations are disclosed.
7. Review rollover activity.
8. Understand how rollover options are presented to participants.
9. Confirm whether service providers are acting as fiduciaries or as educators when discussing rollovers.
10. Monitor patterns or trends over time that may warrant further review.

Source:

www.dol.gov/

Please consult ERISA counsel regarding the application of the five-part test and fiduciary obligations to your specific facts and service relationships.

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