

# Action Plan: DOL Fiduciary Rule's June 9 Compliance Date

This Action Plan consists of practical steps and considerations any service provider that interfaces with ERISA plan fiduciaries and/or participants, as well as fiduciaries and owners of individual retirement accounts (Retirement Investors), may consider taking as we approach the Fiduciary Rule's June 9 applicability date. For internal purposes, service providers may consider carefully documenting how these steps were taken. Based on the information gathered from these steps, particularly Stage 1, consider consulting with internal or external counsel on whether, and to what extent, the Fiduciary Rule applies to any of your services.

## STAGE 1

- ❑ Inventory verbal and written communications to Retirement Investors that occur either before the client relationship begins or during the relationship. This includes marketing materials and information that you consider to be educational in nature, as well any communications regarding rollovers. Once the inventory is completed, separate those communications that are more general in nature versus those that are more tailored to the Retirement Investor.
- ❑ Seek to identify those communications that may fall outside the scope of the rule. Consider: (A) Are you making available a platform from which a plan fiduciary may select/monitor investment alternatives? (B) Are the communications general in nature, such as a general circulation newsletter? (C) Are you providing general financial/investment information? (D) Do you provide model asset allocation portfolios?
- ❑ Identify Retirement Investors that are represented by sophisticated entities, such as banks and registered investment advisers.

## STAGE 2

Based on the foregoing questions and analysis, to the extent any communications are potentially within the scope of the Fiduciary Rule, then consider the following steps:

- ❑ Conduct fiduciary training internally. Become versed in the core ERISA fiduciary duties of prudence and loyalty. You should be aware of these duties and be able to explain them in Plain English. Schedule refresher sessions on fiduciary duties over time for the relevant individuals.
- ❑ Embark on a methodical process to identify actual and potential conflicts of interest firm-wide (including affiliates). Are those individuals communicating with Retirement Investors receiving incentive compensation? Does the firm or any of its employees, agents or other representatives receive compensation that differs based on an investment selection? Does the firm's revenue vary with the investment recommendation?
- ❑ Once these types of conflicts are pinpointed, document them and identify a corresponding mitigation approach in the form of policies and procedures. Track the potential and actual conflicts and mitigation efforts over time. Retain this information internally.

If you have any questions regarding this action plan, please contact Stradley Ronon Counsel [George Michael Gerstein](mailto:ggerstein@stradley.com) at 202.507.5157 or [ggerstein@stradley.com](mailto:ggerstein@stradley.com).

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