

DOL's Final Fiduciary Rule – What Does It Mean for Your 401(k)?

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Every employer offering a 401(k) plan is faced with the decision about what investment options to make available to participants through their plan. Investment options carry different risks as well as different costs. The amount of total assets in a 401(k) plan can affect the variety of investment options an employer can make available to participants. Typically, a greater variety is available to larger plans. Most employer/plan sponsors aim to provide a diverse offering in order to allow participants a wide variety of options in directing their own investments. In designing available investment options, a plan sponsor generally relies on a third-party advisor. Those advisors may or may not maintain fiduciary status in regards to the 401(k) plan. Where an advisor does not maintain fiduciary status, an employer is ultimately the party responsible for selection and monitoring of available investment options.

The final rule issued by the DOL on April 8, 2016 aims to increase the level of responsibility for every third-party advisor to a 401(k) plan. Many advisors were typically held to a weaker “suitability” standard, met by recommending products that meet a client’s general needs and risk tolerance even where those same products may result in greater rewards for the advisor than competing lower-fee investments would. As a result of the final rule, those providing investment advice to retirement plan sponsors and participants now need to meet a “best interests” standard, meaning they must only offer advice in the best interests of plan participants and beneficiaries and must disclose any potential conflicts of interest.

So what should an employer that sponsors a 401(k) plan do in light of the DOL’s final rule? First, every plan sponsor should clarify the status of their current advisor. Is that advisor a registered investment advisor? Is that advisor a fiduciary to the 401(k) plan? Once the answers to those questions are confirmed, plan sponsors should be prepared for receiving and reviewing more disclosures from third-party advisors and lengthier service contracts.