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## **NEW RULES FOR RETIREMENT FIDUCIARIES** *Most significant changes in 30 years are coming.*

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The Department of Labor is following through on its promise to update the retirement plan landscape. Three major rule changes are scheduled for the near future. All retirement plan fiduciaries and administrators should be aware of them.

**#1: “Covered” service providers must fully describe their services & fees.** This rule will take effect on April 1, 2012. It requires “covered” service providers (financial advisors, financial consultants or third-party administrators who expect to receive \$1,000 or more in direct or indirect compensation for their services) to detail their compensation and/or fee structure to fiduciaries. (CSPs also include financial advisors or TPAs who act as fiduciaries or Registered Investment Advisors for plan sponsors.) If applicable, the CSP must detail any fees charged for recordkeeping along with recordkeeping methods.<sup>1,2</sup>

**#2: Fiduciaries must detail fees (and more) to plan participants.** If participant-level fee disclosures aren’t provided to plan participants after May 31, 2012, then a plan participant or beneficiary may claim a violation of fiduciary duty on the part of the plan sponsor. For calendar year plans, initial quarterly disclosures must be furnished by August 14, 2012. The new regulations require fiduciaries to disclose (and update)

- Rules related to the dissemination of investment instructions for the plan
- Plan fees and expenses paid from participant accounts (plus a breakdown of these fees, i.e., investment management fees, admin fees, cost-of-advice fees)
- Any other specific fees or charges that may be drawn from a plan participant’s account.<sup>3,6</sup>

**#3: The DOL is redrafting its fiduciary rule.** It intends to come forth with a new rule early in 2012, under which the definition of “fiduciary” could be expanded to include anyone who provides advice to a retirement plan or to IRA owners. A group of nearly 30 Congressional Democrats protested expanding the definition of “fiduciary” in a letter to Labor Secretary Hilda Solis last May, contending that it would backfire and eventually reduce access to investment education and information for plan participants. Nearly 50 House Republicans followed suit with a letter to Secretary Solis in November, urging that the new rule not encompass IRAs. However, Assistant Labor Secretary Phyllis Borzi has indicated that IRAs will be included under the redrafted fiduciary duty rule. The concern among legislators and financial services professionals is that the definition of “fiduciary” will become so vague that even the most basic education and advice could fall under ERISA status, leading to possible headaches for plan providers and plan participants.<sup>4,5</sup>

**The goal?** The DOL wants to make these plans more transparent. This is an occasion for plan advisors to reconnect with plan sponsors, fiduciaries and participants.



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#### **Citations.**

- 1 - [www.dol.gov/ebsa/newsroom/2011/11-1063-NAT.html](http://www.dol.gov/ebsa/newsroom/2011/11-1063-NAT.html) [7/13/11]
- 2 - [prudential.com/media/managed/PruPA-DOLServiceProviderFeeDisclosure.pdf](http://prudential.com/media/managed/PruPA-DOLServiceProviderFeeDisclosure.pdf) [9/10]
- 3 - [www.nagdca.org/content.cfm/id/nagdcanote20111013](http://www.nagdca.org/content.cfm/id/nagdcanote20111013) [10/13/11]
- 4 - [accountingtoday.com/news/Congressional-Democrats-Want-Agencies-Revise-Fiduciary-Rule-58352-1.html](http://accountingtoday.com/news/Congressional-Democrats-Want-Agencies-Revise-Fiduciary-Rule-58352-1.html) [5/12/11]
- 5 - [www.investmentnews.com/article/20111205/FREE/111209970](http://www.investmentnews.com/article/20111205/FREE/111209970) [12/5/11]
- 6 - [montoyaregistry.com/Financial-Market.aspx?financial-market=retirement-income-planning-the-basics&category=3](http://montoyaregistry.com/Financial-Market.aspx?financial-market=retirement-income-planning-the-basics&category=3) [12/7/11]