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Who's a Fiduciary Now? Understanding the Department of Labor's New Definition

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The sky isn't falling, but in a very real sense the retirement world is changing. After months of angst from many in the industry and boisterous posturing by members of Congress, on April 8, 2016, the Department of Labor released a final regulation that more broadly defines who is an "investment-advice" fiduciary for purposes of ERISA and the Internal Revenue Code. Along with related prohibited transaction exemptions issued at the same time, the DOL's new regulatory regime will dramatically expand the scope of its enforcement authority and, in the process, change the way that many service providers interact with plan sponsors.

Investment consultants, recordkeepers, and other service providers will be most affected by the new rules. Conversations and transactions that previously were untouched by ERISA – such as distributions and rollovers from retirement plans, conversations with call center representatives, and advice about IRA investments – now will be measured against "best interest" standards. And although these rules may not *directly* affect employers and plan-level fiduciaries, those fiduciaries nevertheless have a duty to understand the new regulatory regime so that they can protect retirees and participants and mitigate their own co-fiduciary liability.

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