The Department of Labor (DOL) has released its final fiduciary rule that broadens the definition of investment advice to advisors who receive compensation for providing investment advice to retirement plans such as 401(k)s and IRAs. The regulatory package also includes two new prohibited transaction class exemptions and amendments to several existing prohibited transaction class exemptions.

This Quick Guide is the first of a series that provides a framework for analyzing the impact of the DOL’s final fiduciary rule. It contains a high-level overview of initial considerations to address in order to comply with the final rule.

1. Inventory your business and operational models.

The rule will require fundamental changes to how advisors, broker-dealers, banks, insurance companies, and consultants provide services to retirement investors and are compensated. The first step should be to inventory your business and operational models as well as your product offering. How your firm processes business going forward will become increasingly important.

Understand the following aspects of your business, as different models will be affected by the rule differently. Please remember to consult with your in-house counsel and compliance departments as you evaluate how to move forward under the final rule.

### CONSIDERATIONS FOR FIRMS:

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### Determine where you may be a fiduciary.

The DOL’s rule cites that a person or entity is subject to the ERISA fiduciary standards, if, for a fee or other compensation, the person provides:

- Covered advice (as defined in the new definition of investment advice)
- Represents or acknowledges fiduciary status, or provides advice under an agreement, arrangement or understanding that the advice is: (a) individualized to, or specifically directed to, the advice recipient, and (b) for consideration in making investment or management decisions with respect to securities or other property
- Evaluate your business models to understand where you may be providing investment advice to retirement investors.

### Understand where you may have a conflict with received compensation.

Based on the business models you identified, how are your firm and advisors compensated today for fiduciary recommendations? Are you receiving varying compensation that would pose a conflict, resulting in a prohibited transaction? In general, under ERISA, conflicts must be resolved—not just disclosed. As a result, you will need to analyze compensation sources, including the following:

- Have you received any revenue from third parties that varies based on the investment advice you or your firm provides?
- Does compensation vary based on anything but neutral factors?
- Do you benefit more from selling certain investments, such as proprietary products?
- Are your advisors or your firm being compensated by third parties, such as fund companies?

### Find solutions to resolve any conflicts.

In order to resolve conflicts, you must either eliminate the conflict or you can rely on existing and/or new prohibited transaction exemptions. Your options include:

- Rely on existing exemptions—In certain instances, you may be able to continue to use existing exemptions. However, keep in mind that the new rule narrows many existing exemptions. You should carefully review your approach to assess where changes may be needed
- Evaluate the use of the new Best Interest Contract (BIC) or Principal Trading exemptions to obtain relief from conflicts
- Consider new business models, evaluate reliance on the BIC exemption or other approaches, such as limiting your product offering to advisory business, managed accounts or self-directed accounts only

### Determine the impact of your plan.

Based on the business and operational models noted earlier, determine what changes you may need to make. What will you do differently? You may develop a hybrid approach by identifying when and where you act as a fiduciary, by leveraging the BIC exemption for certain client segments and/or account sizes in addition to conflict-free solutions.

Consider how a platform that allows you to consolidate your business may also provide greater oversight capabilities and efficiencies. You should seek out a platform that helps you improve compliance with the DOL’s Conflict of Interest Rule.

Based on the business and operational models noted earlier, determine what changes you may need to make.

What will you do differently?

### Determine the impact of your plan.

Based on your business model transition requirement, you should think about the timing and how to implement these changes. You may want to consider establishing working groups to determine next steps, time to complete identified tasks and who will be responsible for performing them.

Also review which documents will need to be modified once you decide on your solution set:

- Contracts and disclosures
- Training materials
- Policies and procedures, keeping in mind how you will present them to clients
- Compensation schedules and agreements

The DOL Rule allows for a transition period from April 10, 2017 to January 1, 2018. Compliance with the BIC exemption must be in place by April 10, 2017 although you have until January 1, 2018 to comply with certain requirements.
You should begin the education process now.

Prepare for awareness and education.

You should begin the education process now. You will need to determine what you are comfortable communicating to advisors and clients while you are still in the planning process. You should also plan for advisor and client education once you have decided on any business model changes.

You may want to start by contacting the law firms you work with to see what educational materials they can provide.

For More Information

Look for future Pershing Quick Guides. Also talk to your Pershing Relationship Manager about how Pershing’s open-architecture platform can help facilitate compliance oversight and governance under the new rule. Additional information can be found in Pershing’s DOL Resource Center in the Marketing Center in NetX360®.

Additional information on the rule can be found at:

› DOL Website
› Securities Industry and Financial Markets Association (SIFMA) Resource Center
› Insured Retirement Institute (IRI)
› Money Management Institute (MMI)

Pershing can help.

As you assess the implementation complexity and risk exposure of this new rule, your firm will likely need to pursue multiple business and compliance strategies. Pershing will provide clients with a broad set of solutions that align with those strategies, including a comprehensive and flexible BIC platform.