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Who Can Be Trusted for Retirement Advice? New Rules Strengthen Protections.

More investment professionals will be required to act in their customers' best interest when providing advice about their retirement money.

By Tara Siegel Bernard

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When you walk into a financial adviser's office, you expect them to put your best interests above all else — in the same way a doctor would, rather than, say, a car salesman. But many people don't realize that the rules financial professionals must follow vary, depending on where they work and what products they're selling.

One of those federal regulations, which governs retirement plans, was just tightened: The Biden administration announced new rules on Tuesday that will require more financial professionals to adhere to a higher standard when providing financial advice about your retirement money.

Starting Sept. 23, investment professionals who hold themselves out as trusted advisers will be required to act as fiduciaries — that is, they can't place their interests ahead of the investor — when customers pay them for advice on individual retirement accounts, 401(k)s and similar buckets of tax-advantaged dollars. The goal is to minimize conflicts of interest, or at least ensure that they aren't influencing investment professionals' advice that lines their pockets at the customers' expense. The rule, which will be published in the Federal Register on Thursday, will be fully effective in September 2025.

The changes, issued by the Department of Labor, which oversees retirement plans, close loopholes that made it easier for many investment professionals to avoid fiduciary status — including, for example, when workers roll over their savings from a 401(k) plan to an individual retirement account. Those transactions, which totaled nearly $800 billion in 2022, weren't always covered by these investor protections, even though these sums often amount to a person's life savings.

"If you're a retirement investor looking for help with how to manage your retirement investments, it's only reasonable that you get advice that is prudent, loyal and doesn't involve misleading you," said Tim Hauser, deputy assistant secretary for program operations of the Employee Benefits Security Administration at the Labor Department. "It shouldn't matter what product you're recommending, and that's what the rule does."

This isn't the first effort to update the federal retirement law known as ERISA, which was enacted in 1974 to oversee private pension plans before 401(k)s existed. Strengthening its protections has been the subject of intense debate for more than a decade, over three presidential administrations.

Indeed, critics (including financial industry stakeholders) say the new regulation — initially introduced in October — was rushed, but the Labor Department has been working on different versions since it introduced its first proposal in 2010. The Obama administration issued a more stringent rule in 2016, but the Trump administration hit the brakes before it was fully implemented. An appeals court later struck it down in 2018.

Agency officials said they took comments from the financial industry and others into account and made several changes that are reflected in the final rule. But Lisa M. Gomez, assistant secretary for Employee Benefits Security, said the investor protections remain. “There is nothing in these clarifications or changes that one should interpret as a watering down or a real change in position from the proposal,” she said on a media briefing call.

When the onus is on individuals to save and invest for a financially secure retirement, with money that must last through advanced age, investor protections are paramount. Still, individuals might be wondering why they aren’t entitled to fiduciary-level advice on all of their money, all of the time, regardless of what account it sits in or what type of product they’re investing in.

Here’s an overview of how the rules have changed and what it means for you — and how to find fiduciary-level professionals, regardless of the political climate.

What’s changed and where do these rules apply?

The regulation redefines who is considered an investment fiduciary. Before the changes, financial professionals had to meet a five-part test before they were held to that standard — and one part stated that the person making the recommendation must provide the advice on a regular basis. That means one-time recommendations were not necessarily included, which left 401(k) rollover guidance at risk.

The new rule aims to level the playing field for all financial professionals — including investment brokers and insurance salespeople — who describe themselves as trusted advisers when providing advice about your retirement money. It doesn’t matter whether they’re recommending mutual funds, stock investments, insurance products like annuities, illiquid real estate investments — it’s all covered. Investment brokers selling retirement plans to businesses would also be held to the fiduciary standard.

Why is fiduciary status important? What does it even mean?

Fiduciaries under the federal law known as ERISA must follow strict rules of conduct and avoid conflicts of interest. That means they can’t provide advice that affects their compensation, unless they meet certain conditions to ensure investors are protected. This includes putting policies in place to mitigate those conflicts. Investment professionals must also be upfront with customers about their roles as fiduciaries — if they have conflicts, and many do, they must now acknowledge their fiduciary status in writing.

That should go a long way in helping retirees who land in their offices, said Joe Peiffer, a founding partner of Peiffer Wolf Carr Kane Conway & Wise, a law firm in New Orleans. He said he has represented thousands of investors who have received poor advice, including from insurance salespeople who call themselves financial advisers when selling indexed annuity products and universal life policies — often with "disastrous" results.

"They're exactly the kind of case that the new D.O.L. rule is trying to address," he said, referring to the Department of Labor. "Because, currently, when we sue these 'advisers,' their response is that they are nothing more than insurance salesman that do not have a fiduciary duty."

I want to work with someone who will *always* act in my best interest, on *all* of my money, not just retirement accounts.

No financial adviser is entirely conflict-free, but the ecosystem in which your adviser works matters — and will influence what type of conflicts are embedded in the way they do business. Some brokers, for example, may be paid more to sell one product over another product. Or, the firm itself might have complex revenue sharing agreements, which is when a mutual fund company makes payments to a brokerage firm — and some funds may pay a firm fatter fees than others.

Under the new rule, any financial professional making recommendations must have "policies and procedures to manage conflicts of interest and ensure providers follow these guidelines," department officials said.

The simplest way to buy advice is to hire a "fee-only" independent certified financial planner who is a registered investment adviser, which means they are required to act as fiduciaries when providing investment advice about securities (stocks, mutual funds and the like). As part of that fiduciary duty, they must eliminate conflicts or disclose them.

“Your odds of conflicts go up, the longer their disclosures are,” said Benjamin Edwards, a professor at the William S. Boyd School of Law at the University of Las Vegas.

What questions should I ask when choosing an adviser?

There are several, but the most important: Are you a fiduciary who promises to put my interests ahead of yours 100 percent of the time with 100 percent of my money? How do you get paid — and will you get paid more for recommending one investment over another? What’s your investment philosophy — does it involve mostly low cost index-based investments?

Oh, and by the way, will you sign this fiduciary pledge? If they refuse, find a new adviser who will.

Where can I find a trusted adviser?

There are more places now than there have been in the past: XY Planning Network, Garrett Planning Network and the National Association of Personal Financial Advisors (NAPFA) are all trade groups whose members accept only fee-based compensation, which minimizes their conflicts of interest. They also allow you to search for professionals based on their expertise (retirement planning, for example, or stock option exercise strategies), “You don’t want the adviser to be learning about how to help you on the fly,” said Alan Moore, a financial planner and co-founder of XY Planning Network.

There are also newer entrants, including Domain Money and Facet, which connect people to independent financial planners who get paid flat fees.

Roboadvisers, or companies that lean heavily on technology to manage your investments but also often have human financial advisers, may be a solid option for people who are just starting out — or who have an investment plan they want to put into place and let run on autopilot.

One of the most valuable services an adviser can provide is saving us from ourselves, in the darkest market moments, when an individual may be most likely to give into emotion and sell investments (or buy) at the worst possible time. Just make sure the adviser is a fiduciary.

Tara Siegel Bernard writes about personal finance, from saving for college to paying for retirement and everything in between. More about Tara Siegel Bernard

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