

Department of Labor

Employee Benefits Security Administration  
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Employee Benefits Security Administration  
U.S. Department of Labor  
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We value the ultimate goal and aim of the Fiduciary Rule, the intent to protect retirees from abusive sales practices, and provide a remedy through which retirees can be made whole.

As indicated in the Final Rule and the subsequent FAQ's, the DOL views level fee fiduciaries as inherently less conflicted in the investment advice they provide as opposed to non-level fee fiduciaries.

In response to questions 3 and 18 of your request for information regarding the Fiduciary Rule and Prohibited Transaction Exemptions we would like to make the following proposals for level fee fiduciaries:

- A. The rule should exclude all qualified purchasers as defined in Section 2(a)(51) of the Investment Company Act.
- B. The rule should exclude qualified clients as defined in 275.205-3(d)(1) and accredited investors as adopted in the SEC rule release IA-3341;
  - **Except**, a new retiree who has no experience managing their own investments (including selecting funds in a 401(k) lineup as no experience), and is doing so for the first time; therefore conducting their first rollover (from plan to IRA), who otherwise technically would be an accredited investor or qualified client.
  - Subsequent contributions to the client's portfolio in conjunction with their investment policy statement should be covered under the prudent process previously conducted.
  - Client should be defined as in 275.202(a)(30)-1.

The intent of ERISA was to protect unaware investors. For example the DOL saw as necessary to protect an employee in a manufacturing company who was relying on his 401(k) contributions to last him through retirement, old age and declining health. Under the above proposal, this employee will still maintain his ERISA protections while at the same time, reducing the regulatory burden placed on many investment advisers, who are regulated by the SEC and already follow the prudent process as a "Best Practice". The level fee adviser would only need to demonstrate that it conducted a prudent process in the formation of the retired employee's investment policy statement, and selected investments. This would likewise reduce the compliance paperwork burden on subsequent contributions the retired employee may make to the IRA.

There are two concerns among advisers throughout the industry which can be classified as 1) Civil Risk, due to lawsuits filed plaintiff's council, and/or 2) Compliance Risk, the result of audit deficiencies with regard to the lack of documentation and resulting fines issued by regulators.

- 1) Civil Risk: Should the level fee BIC apply to registered investment advisers with the SEC who already work under a fiduciary standard? Will the level fee BIC prevent equitable competition, capital formation, and efficiency? Will an "active manager" be liable for providing investment advice-even through the current prudent process- because he was not a "passive manager"?
- 2) Compliance Risk: If an adviser would be able to measure its IRA relationships within the provisions described above the compliance burden would be significantly lessened. For example an adviser has a longstanding relationship with a client who is a qualified purchaser, and this qualified purchaser decides to create a trust funded with a rollover from their defined benefit pension plan for the benefit of his minor child. Under the suggestions above the adviser would not bear an additional compliance risk for his investment recommendations.

It is the opinion of many advisers that the regulatory compliance risk by not documenting a prudent process with every covered account interaction will result in the denial of smaller investors receiving fiduciary investment advice. The additional cost of documenting the process and the incurred liability from compliance risk does not make advisory services to the small investor an economically viable service.

Additionally, most (if not all) level fee fiduciaries already must document all of their trades and order memoranda, all written communications of investment recommendations, and a list of all their discretionary accounts under 275.204-2(a)(3),(7),(8), and (16). These records are the auditable documents which are created by the actual trading actions of investment advisers; in contrast to the DOL paperwork compliance burden of proposed transactions.

Attached is a draft copy of the worksheets we currently use in regard to file documentation. Estimated time to gather, complete, and review this form is 1.5-3 hours. We have received input from our legal counsel and have used resources provided by the IAA in producing our worksheets.

We believe this approach of excluding qualified experienced investors along with documentation of advice for non-experienced investors includes significant precedents and regulatory developments in the investment advice industry, and is the simplest way to achieve the mission of the EBSA and the goal of the Fiduciary Rule.

Sincerely,



Jonathan S. Dinkins, CPA/PFS, CIMA®, AIF®, CMFC®  
Shareholder, Managing Director – Investment Advisory Services



Avraham Levitan, CAMS, CFE  
Compliance Officer

Name:

**NEW IRA ACCOUNT CHECKLIST**

**IRA to IRA**

- **Evaluate client objectives & alternatives to a rollover:**
  - ❖ Rollover their assets to new employer plan?
  - ❖ Rollover their assets and create a new IRA?
  
- **Compare fees and expenses (Attach Recent Account Statement)**
  - Will the new employer pay for some administrative and or advisory fees under the plan that the client would pay in IRA context? **Yes/No**
  - If the employer pays some fees under the plan, what additional cost will the client will incur?  
\_\_\_\_\_

Current IRA	GJ IRA	New Employer Plan
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• What are total:			
➤ Plan fees?	<u>NA</u>	<u>NA</u>	_____
➤ Custodian fees?	_____	_____	_____
➤ Transaction fees?	_____	_____	_____
➤ Advisory fees?	_____	_____	_____
➤ Distribution cost for the client under the new employer plan?	<u>NA</u>	<u>NA</u>	_____

Current Plan	GJ IRA	New Employer Plan
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**Check services available under each option**

• Comprehensive Investment advisory services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Multiple account coordination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Customization of risk, investment strategy, and goal planning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Best range of investment options	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Tax planning services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Liquidity planning services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Income planning services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• RMD processing services (is this relevant to this client)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Withdrawal assistance services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Withdrawal planning services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Asset allocation services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Education services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

• What type of platform is the plan on?			
• Proprietary	_____	_____	_____
• Open	_____	_____	_____
• Limited	_____	_____	_____

• Meeting Frequency (Q-Quarterly, A Annual, O-Other)	_____	_____	_____
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- Does the plan provide access to planning tools, telephone help lines, educational materials and workshops or other services that would not be available if the client left the plan? **Yes/No**
- Is portfolio rebalancing of material consequence between the presented possibilities? **Yes/No**

**What are the investments available under each option (using options that are reasonably foreseeable for the IRA)?**

- What are the historical performances of the investments under consideration? (Please attach **Performance & Due Diligence Reports**)

**Would client benefit from availability of other features available in IRA's but not plans?**

- What is the client's marginal tax Bracket? \_\_\_\_\_ %
- What is the client's current age? \_\_\_\_\_
- Would the client benefit from a Roth conversion? **Yes/No**
- Availability and quality of advice within plan? **(NA?)**
- The client's other accounts and their impacts on the assets at issue?

**Based on the above, what is your recommendation and why is it in the best interest of the client?**

- Transfer account to new employer plan?
- Rollover their assets and create a new IRA?
- To take an asset distribution?

Comments:

Name:

**NEW IRA ACCOUNT CHECKLIST**

**Plan to IRA**

• **Evaluate client objectives & alternatives to a rollover:**

- ❖ Take an asset distribution?
- ❖ Rollover their assets to new employer plan?
- ❖ To leave their assets in the current plan?

• **Compare fees and expenses (Attach 404(a)(5))**

- Does the employer pay for some administrative and or advisory fees under the plan that the client would pay in IRA context? **Yes/No**
- What new cost will the client incur with a rollover? \_\_\_\_\_

Current Plan	GJ IRA	New Employer Plan
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• What are total:

➤ Plan fees?	_____	<u>NA</u>	_____
➤ Custodian fees?	_____	<u>NA</u>	_____
➤ Transaction fees?	_____	_____	_____
➤ Advisory fees?	_____	_____	_____
➤ Distribution cost for the client under their current plan?	_____	<u>NA</u>	_____

Current Plan	GJ IRA	New Employer Plan
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**Check services available under each option**

• Comprehensive Investment advisory services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Multiple account coordination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Customization of risk, investment strategy, and goal planning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Best range of investment options	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Tax planning services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Liquidity planning services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Income planning services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• RMD processing services (is this relevant to this client)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Withdrawal assistance services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Withdrawal planning services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Asset allocation services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Education services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

• What type of platform is the plan on?

- Proprietary
- Open
- Limited

_____	_____	_____
_____	_____	_____
_____	_____	_____

• Meeting Frequency  
(Q-Quarterly, A Annual, O-Other)

_____	_____	_____
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- Does the plan provide access to planning tools, telephone help lines, educational materials and workshops or other services that would not be available if the client left the plan? **Yes/No**
- Is portfolio rebalancing of material consequence between the presented possibilities? **Yes/No**

**What are the investments available under each option (using options that are reasonably foreseeable for the IRA)?**

- What are the historical performances of the investments under consideration? (Please attach **Performance & Due Diligence Reports**)

**Would client benefit from availability of other features available in IRA's but not plans?**

- Penalty-free withdrawals between ages 55 and 59-1/2? **Yes/No**
- What is the client's marginal tax Bracket? \_\_\_\_\_ %
- What is the client's current age? \_\_\_\_\_
- Would the client benefit from a Roth conversion? **Yes/No**
- Plan loans? **Yes/No**
- Protection from legal judgments? **Yes/No**
- Beneficial tax treatment of employer stock? **Yes/No**
- Availability and quality of advice within plan?
- The client's other accounts and their impacts on the assets at issue?

**Based on the above, what is your recommendation and why is it in the best interest of the client?**

- To take distribution?
- Transfer account to new employer plan?
- Leave account in the current plan?
- Rollover to IRA account?

Comments: