



Giff Lehman, MBA, CFP® | Mike Leavy, CFA | Kevin Mahoney, CFP®
Allison Barrientos, CPA | Fran Mosher | Spencer Kennedy
Emily Smith | Eric Mueller, CPA

[About Us](#) | [Our Services](#) | [Resources](#) | [Contact Us](#) | [Past Newsletters](#)

The Department of Labor's Fiduciary Ruling April 2016

You may have seen headlines that the Department of Labor (DOL) etched a final ruling on the fiduciary standard for the financial industry this month. "Fiduciary" is a legal standard, which requires that advice given to a client be in his/her best interest. This ruling is extremely important, but is lengthy and convoluted, so we have summarized it for you herein.

First, some needed background. Stock brokerage firms (e.g. Morgan Stanley, UBS, and Merrill Lynch) were originally established to facilitate transactions since investors could not go directly to the stock exchange to buy or sell stock. They were not established to give advice. Think of it like buying a car from a dealership since we can't go directly to the Toyota plant to buy a car, and we know the salesperson isn't giving us advice so much as facilitating a transaction.

Through time, two relevant things happened. One, those stock brokerage firms began giving advice, yet regulations did not keep up with this change to require the advice to be in the client's best interest. What resulted was conflicted advice, which the White House Council of Economic Advisors found costs investors roughly \$17 billion every year. Two, a different business model, called Registered Investment Advisors (RIAs), was established to provide objective advice. This objectivity was primarily accomplished through the charging of fees instead of commissions, and by the fact that RIAs are legally bound to the fiduciary standard.

Stemming from the 2007-2009 financial debacle and innumerable financial abuses, the federal government decided it was time for all investment advice to be bound by the fiduciary standard - not just advice given by RIAs. The DOL was charged with this initiative and made its first proposal in 2010. After six years of unprecedented financial industry lobbying, negotiating, and compromising, we have the DOL's final ruling. The thrust of the ruling is that **regardless of business structure, any advisor giving investment recommendations for any retirement account (e.g. 401(k), 403(b), IRA, Roth IRA) must apply the fiduciary standard.**

As a result of this rule, investors are better off than they were just last month, but material shortcomings remain, such as:

- Education is not covered by the fiduciary standard, meaning if an advisor is educating a client about his/her retirement account, but not actually making investment recommendations, that education does not need to be in the client's best interest.
- The fiduciary standard does not apply to taxable accounts (e.g. individual, joint, trusts), meaning a person who saved throughout life in a taxable brokerage account instead of in retirement accounts would not receive the fiduciary standard.
- Advisors can still put clients into proprietary investment products and charge commissions; they just need to disclose such conflicts in their paperwork.
- All currently owned investments are grandfathered, meaning an advisor can recommend an investor continue to hold and auto-invest in an investment that is not in his/her best interest if the investor owned it before this ruling came out.

We are pleased that investors are better protected now, but are disappointed that they are still not protected enough. Investors should be able to rely on the advice they receive to be in their best interest no matter what. Of course in reality, the fiduciary standard is not a panacea - ethical advisors have and will give best interest advice regardless, and unethical advisors have and will give compromised advice regardless. However, having a fiduciary standard is critical because it is a standard to which an advisor can be held accountable, whether that is in a client meeting or in court.

How does this new rule affect Integris clients? It doesn't. We have been a Registered Investment Advisor since our founding in 1997, the first section of our Client Agreement states our fiduciary obligation, and we live by that. Our hope is that someday all investment advice will be bound by this standard so that all investors receive the protection they deserve.

written by:
Kevin Mahoney