

The New Department of Labor Rule & Retirement Plan Trends

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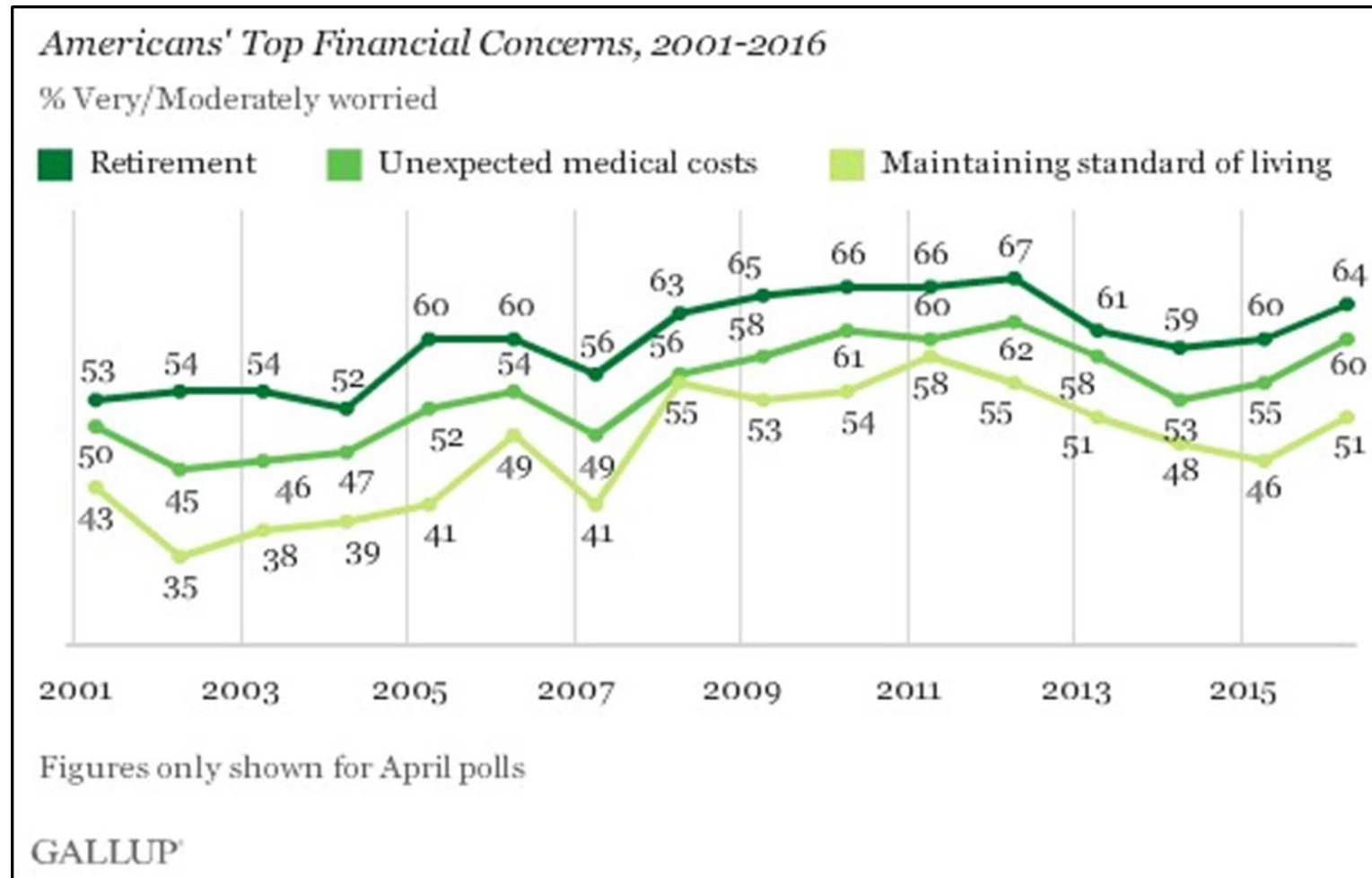


Today's Agenda

- Retirement Concerns
- Understanding the NEW Department of Labor Fiduciary / Conflict of Interest Rule
- Implications & Timing
- Recent Litigation & Updates
- Questions??



Retirement Concerns...



DOL Rule Driven By IRA Success

- **Washington is worried assets leaving the highly-regulated “ERISA world” to the “IRA world”, with rollovers the key decision point impacting the future of retirement**
- **IRAs are where the ERISA money goes – Baby Boomers starting to rollover their ERISA plan assets, fueling growth**
- **IRAs now hold about \$8 trillion in assets compared to about \$7 trillion in ERISA plan assets, up from about \$4.5 trillion IRA assets and about \$6 trillion ERISA assets in 2010**
- **The Final Rule and the BICE (Best Interest Contract Exemption) build on the prohibited transaction rules to create a common “retirement advice world”**



Retirement Advice

New Retirement Advice World brings fiduciary status and LOTS of conditions...

- **Package consists of final regulation redefining fiduciary advice and new or amended prohibited transaction exemptions**
- **Expanded fiduciary definition used in ERISA and in Tax Code prohibited transaction rules**
- **Exemptions – new BICE, revised 84-24, several others**
- **DOL regulates conduct and compensation for all financial advisors advising ERISA plans and IRAs, and rollovers or distributions to/from them**
- **Broker-Dealer, RIA, insurance agent, registered representative, consultant – all affected. DOL jurisdiction is based on conduct, license is irrelevant**



Who is Now a Fiduciary?

It is probably easier to ask who isn't...*

Investment advice is fiduciary investment advice if it is provided to:

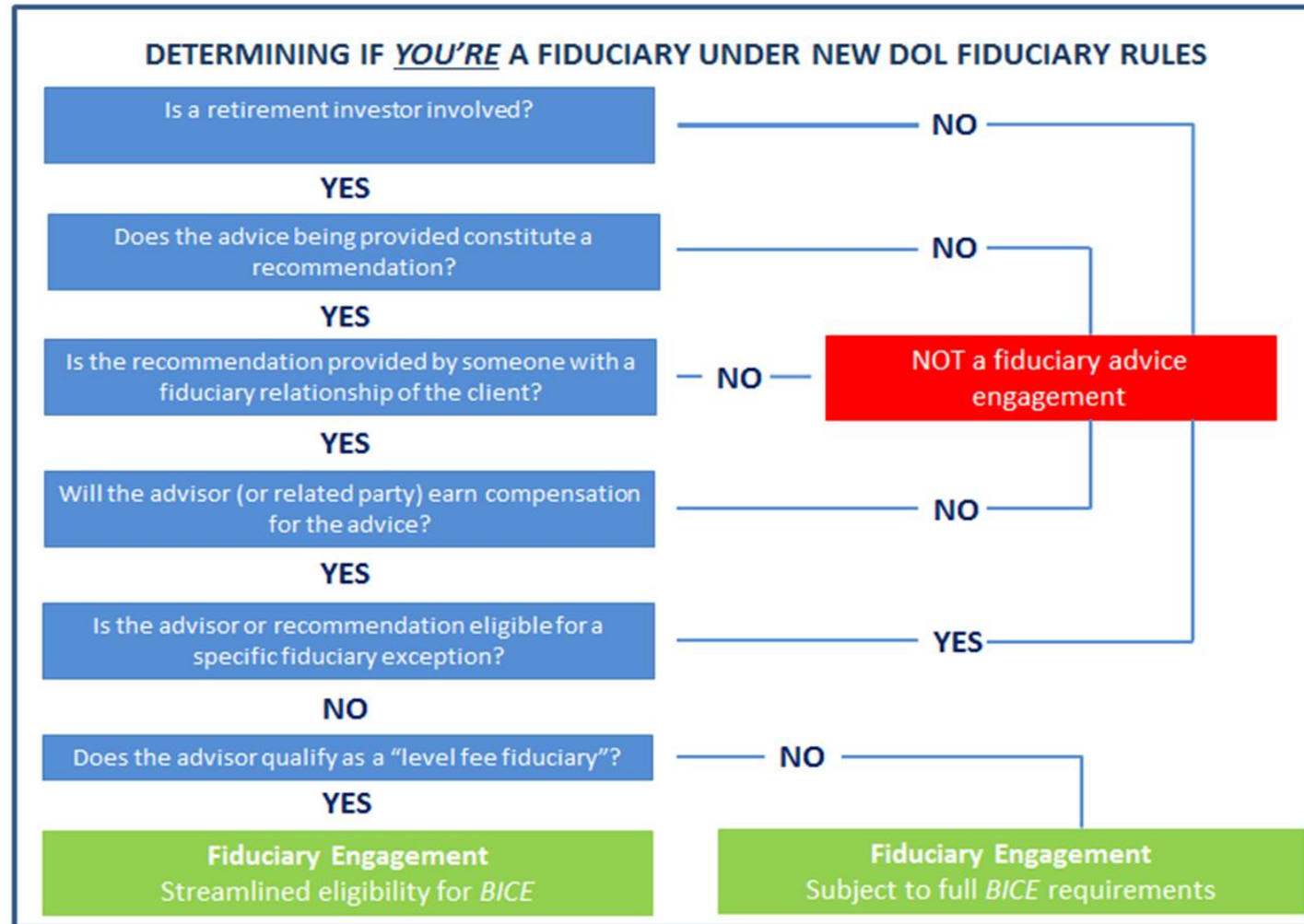
- IRAs or IRA owners; or
- ERISA plans, or plan participants/beneficiaries

AND it consists of:

- Recommendations as to acquiring, holding, disposing of or exchanging investments;
- Recommendation about distributions or rollovers to participants and IRA owners (including whether, in what amount, in what form, or where to);
- Recommendations of fiduciary advisors; or
- Recommendations of type of investment account (e.g. brokerage vs. fee-based)



Are You a Fiduciary?



Prohibited Transactions

By April, prohibited transactions are everywhere!

- **Rollovers – two basic questions: Are you giving fiduciary advice? Is it prohibited?**
- **Advice in an IRA? How are you compensated? Is it prohibited?**
- **Advice to plan/participants? How are you compensated? Is it prohibited?**
- **Type of account – new fiduciary question. What factors to consider to give advice? How are you compensated? Is it prohibited?**
- **Distribution Advice – casts a very wide net capturing non-retirement advice as well where IRA is a source of funds. Is it prohibited?**



A New Contract Exemption: BICE

Major Provisions:

- Provides relief for variable compensation, third party compensation, needed for rollover and other scenarios
- Covers advice to plan, plan participants, and IRA owners – expansion from proposal
- No asset list – eliminated from proposal
- Grandfather provision for current arrangements until expired or up for renewal, but no additional money after effective date, and best interest requirement for advice
- IRAs and ERISA plans now handled separately with different remedies and requirements
- Level Fee Option (BIC Lite)
- Disclosures improved, but still onerous
- Does not apply to discretionary management



Implications & Timing

Retirement Plan Advisory Implications:

- **The Shift towards “Specialists” Continues.....**
- **Experience, Technical Expertise and Scale are Paramount**
- **No More Finder’s Fees or 12b-1 Arrangements**
- **Hard Dollar Fee Arrangements (Plans over \$25,000,000)**
- **Plan Adviser’s Value Measured by “Plan Success”**
 - Avg. Deferral Rates
 - Plan Participation
 - Utilization of Plan Design & Default Options
- **Plan’s are looking for much more than an Investment Adviser**
- **Many Brokers, Insurance Agents & Non – Fiduciary Advisors will exit the 401k advisory business or be forced to refer plans to Qualified Plan Advisors**



Implications & Timing

The DOL Fiduciary Rule Timeline

- **September 2010** – DOL Releases “Fiduciary Rule”
- **September 2011** – DOL Withdrawals the “Fiduciary Rule”
- **April 2015** – DOL Re-Proposes the “Fiduciary Rule”
- **September 2016** – DOL Opens & Hold Comment Periods
- **April 2016** – DOL Issues FINAL Rule

FINAL RULE EFFECTIVE JUNE 30th, 2016!!
Advisors & Firms must comply by June 9th, 2017



Implications & Timing

What Should Plan Sponsors Do??:

- Evaluate ALL plan provider relationships & agreements
- Investigate the use of possible revenue sharing
- Identify the use of proprietary investments
- Complete a Plan Review & evaluate ALL plan costs
- Mitigate your Fiduciary risks through appropriate partnerships



Recent Litigation

Recent 401(k) & 403(b) Lawsuits:

- Morgan Stanley
- Franklin Templeton Investments
- Boeing
- International Paper
- Northrop Grumann
- Kraft Foods
- Caterpillar
- United Technologies
- ABB
- Principal Financial
- Lockheed Martin
- Yale University
- Vanderbilt University
- NYU
- Duke University
- Johns Hopkins University



Questions?

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