



## Fiduciaries (before April 10, 2017)

	Brokerage Firm	Investment Adviser	Insurance Company
Ordinary Accounts		IA Fiduciary	
ERISA Plans	ERISA Fiduciary (rarely)	IA Fiduciary ERISA Fiduciary (rarely)	ERISA Fiduciary (rarely)
IRAs and non-ERISA plans		IA Fiduciary	

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	Brokerage Firm	Investment Adviser	Insurance Company
Ordinary Accounts		IA Fiduciary	
ERISA Plans	ERISA Fiduciary	IA Fiduciary ERISA Fiduciary	ERISA Fiduciary
IRAs and non-ERISA plans	Code Fiduciary BIC Contract Required by Jan. 1, 2018	IA Fiduciary Code Fiduciary	Code Fiduciary BIC Contract Required by Jan. 1, 2018

## Assistant Labor Secretary Phyllis Borzi



# 2018 Claims

	Brokerage Firm	Investment Adviser	Insurance Company
Ordinary Accounts			
ERISA Plans	Breach of ERISA Fiduciary Duty	Breach of ERISA Fiduciary Duty	Breach of ERISA Fiduciary Duty
IRAs and non-ERISA plans	Breach of Contract Claim		Breach of Contract Claim

## Old 5 Part Test to Determine if Fiduciary

1. render advice as to the value of securities or other property, or make recommendations as to the advisability of investing in, purchasing, or selling securities or other property
2. on a regular basis
3. pursuant to a mutual agreement, arrangement, or understanding with the plan or a plan fiduciary that
4. the advice will serve as a primary basis for investment decisions with respect to plan assets, and that
5. the advice will be individualized based on the particular needs of the plan or IRA







## B/D and insurance company duties - advising an IRA or other No-ERISA Plan

Present – April 9, 2017	No Fiduciary Duty
April 10, 2017 – January 1, 2018	Code Fiduciary Duty <ul style="list-style-type: none"><li>• Single Written Disclosure<ul style="list-style-type: none"><li>Acknowledge fiduciary status</li><li>Acknowledge impartial conduct standards<ul style="list-style-type: none"><li>Best interest standard</li><li>Reasonable compensation</li><li>No material misrepresentations</li></ul></li></ul></li></ul>
January 1, 2018 - Future	Code Fiduciary Duty <ul style="list-style-type: none"><li>• Contract with Investor</li></ul>

## Required Contract Provisions

- Acknowledgment of Fiduciary Status
- Acknowledgment of Impartial Conduct Standards
  - Best Interest Standard
  - Reasonable Compensation
  - No Material Misrepresentations

## Required Contract Provisions

- Warranties as to Policies and Procedures
  - Adherence to Impartial Conduct Standards
  - Prevent Material Conflicts of Interest
  - No Differential Compensation