



What the Heck is a Fiduciary?

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The financial planning profession has been pushing for more and better standards for people who give financial and investment advice, and the code name for these standards is 'fiduciary.' Alas, 'fiduciary' is a somewhat technical term, legally codified in the regulations around the management of qualified plan assets like 401(k), 403(b) and other pension fund accounts. Most consumers don't understand what this means.

You can find the fiduciary standard described in some detail in Section 404(a) of the Employee Retirement Income Security Act (ERISA), which requires anyone who manages or advises corporate pension-related plans to provide advice completely in the interests of the plan participants and beneficiaries. They must also act with care, skill, prudence and diligence—basically giving advice and management that would be provided by a prudent expert familiar with such matters. And they must not engage in self-dealing or conflicts of interest—including selling products for a commission to the plan or its participants.

But here's the interesting part: the people who manage and advise these pension plan assets are held to this rather high standard of behavior, but the same is not true for people who give investment advice and manage portfolios for consumers. There is no comparable law against salespeople who call themselves financial planners and advisors—including wire house brokers (AKA 'Vice Presidents of Investments')—selling expensive products, self-dealing or holding themselves out as professional advisors even if their only qualification is a couple of weeks of sales training.

A terrifying example of this came during the mortgage crisis of 2007-9, when brokers sold billions of dollars of packages of poorly-underwritten home loans to unwary consumers, leading to a blowup which, in addition to wiping out peoples' savings, also nearly brought down the entire global financial system. As one legislator exclaimed during the ensuing Congressional hearings, about the routine fleecing of consumers: "These things were legal!"

Congress has not seen fit to create a fiduciary standard for financial planners and others who give investment advice to consumers, and the Securities and Exchange Commission has actually cautioned advisors against telling consumers that they are willing to give advice under a fiduciary standard of care.

As a result, the profession has really had no choice but to take matters in its own hands, and develop fiduciary rules that a small group of advisors will pledge to abide by. The National Association of Personal Financial Advisors has recently codified a particularly strict version of the fiduciary standard, which all of its members must follow in all dealings with their clients. The standards are similar to the ERISA ones: a duty of care, skill, prudence and diligence; managing any biases that might influence objective advice (including a total ban on sales and commissions); a duty of competence, professional development and knowing when to bring in outside experts to a situation; and disclosure in writing of all fees, timing of payments and the conditions under which the advisor will be compensated, and for what.

It's really never made sense that pension assets were rigorously protected from sales agents and unqualified hucksters, while private assets were exposed to a wild west of advice where the (somewhat minimal) regulatory enforcement focuses only on theft and outright fraud. If people decide they want to work with advisors who voluntarily agree to live under those higher standards, the marketplace might do what Congress and the regulators have resisted.

Sources:

<https://www.napfa.org/napfa-fiduciary-standard>

<https://www.napa-net.org/news/2022/4/sec-cautions-advisers-against-extraneous-use-term-fiduciary/>

<https://www.bclplaw.com/a/web/183775/An-Overview-of-Fiduciary-Responsibilities-Under-ERISA.pdf>

If you have any questions about this article or want to discuss your family finances, investment portfolio, or financial planning advice, please call on me anytime at my number [\(215\) 325-1595](tel:2153251595) or you can [click here to schedule a meeting](#).

Please feel free to forward this article and offer to anyone you know who might have financial questions or need some unbiased advice. Most financial advice is sales advice. In stark contrast, we are fee-only (non-commissioned) fiduciary advisors. We just provide truthful, unbiased advice to our clients.



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