PRI Member Brief

March 16, 2026

Helping financial institutions compete & comply in the retirement marketplace

Retirement Asset Management is a "national enforcement project" for DOL

Investigations will focus on fiduciary processes related to investment selection, monitoring, conflicts of interest, and fees.

—

ERISA §3(21) & §3(38) fiduciaries will likely face increased scrutiny

DOL will examine whether financial institutions are fulfilling their fiduciary obligations.

—

Big Takeaway

New enforcement priorities signal increased scrutiny for banks, broker-dealers, and RIAs.

DOL 2026 Enforcement Priorities:

What the "Retirement Asset Management" Project Means for 3(21) and 3(38) Fiduciaries

While financial institutions have enjoyed a reprieve from the whirlwind of DOL rulemaking, partial vacaturs, and back-and-forth sub-regulatory guidance that has persisted for more than a decade, enforcement is shifting. The DOL's recent priorities clearly signal a renewed emphasis on "professional fiduciaries" – particularly those who advise or manage investments for participant-directed 404(c) plans, such as 401(k)s.

Firms should be prepared to demonstrate documented investment oversight processes for 404(c) plans, including the evaluation of investment options, fees, and conflicts.

© 2026 Pension Resource Institute, LLC – All rights reserved.

DOL recently updated its national enforcement projects and "Retirement Asset Management" will be a central focus of investigations. It is an expansion of previous priorities such as the Fiduciary Service Provider Compensation and Plan Investment Conflicts Projects targeting the receipt of improper or undisclosed compensation by plan consultants and investment professionals.

Specifically, the new project encompasses fiduciary compliance relating to:

- prudent investment selection and monitoring;
- evaluation of fees and expenses;
- identification and mitigation of conflicts of interest;
- fiduciary oversight of ERISA §404(c) participant-directed plans; and
- the conduct of fiduciaries acting under ERISA §3(21) and §3(38).

The focus on service providers acting as investment fiduciaries means that DOL will more closely examine whether financial institutions are fulfilling their fiduciary obligations when advising plan sponsors or exercising discretionary authority over plan investments. For most firms, these services are delivered through financial professionals individually advising on or managing "core" fund line-ups, model portfolios, and qualified default investment alternatives (QDIAs). ERISA requires fiduciaries to follow a prudent process, and the DOL believes that "issues with these processes may be common, especially in midsize plans that may lack the resources of larger plans."

Fiduciary Focus

In recent years, ERISA litigation has frequently focused on plan sponsor decision-making, particularly in connection with fees and investment selection, and the DOL's updated priorities refer to its evaluation of fiduciary practices in light of "recent Court decisions."

"This work includes reviewing 404(c) plans … [and] evaluating the actions of 3(21) and 3(38) fiduciaries."

Indeed, DOL investigations often look beyond the plan sponsor to evaluate the conduct of service providers.

When it comes to financial professionals, our experience is that investigators tend to focus on:

- the methodology used to construct investment menus;
- the criteria used to select and monitor funds;
- the process used to evaluate share classes and fees; and
- the documentation supporting investment changes.

The central question will generally be whether the fiduciary's actions reflect a prudent process consistent with ERISA's fiduciary standards.

It is important to keep in mind that the standard of care owed by ERISA fiduciaries is much higher than that required to satisfy the "primary" regulators of financial institutions (i.e., SEC, OCC, FINRA, etc.). The DOL's investment duties regulation requires that "appropriate consideration [be given] to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or *should know are relevant* to the particular investment or investment course of action involved [and that the fiduciary] act accordingly." Demonstrating a coherent and well-documented fiduciary process will remain the most effective way to mitigate regulatory risk.

ERISA's duty of loyalty requires fiduciaries to act solely in the interest of plan participants and beneficiaries. Consequently, another area of potential scrutiny involves conflicts of interest associated with fiduciary recommendations.

© 2026 Pension Resource Institute, LLC – All rights reserved.

This includes situations where fiduciaries (or their affiliates) receive compensation connected to the investments (and in some cases, services) they recommend or select. DOL investigators will examine whether:

- conflicts were identified and appropriately managed;
- fiduciaries evaluated lower-cost alternatives; and
- compensation arrangements influenced decisions.

While prohibited transaction exemptions (PTEs), such as PTE 2020-02, can provide relief from certain conflicts of interest, firms will need to be able to demonstrate compliance with strict conditions and procedural safeguards.

Documents & Information Requests

When examining retirement asset management practices, investigators are likely to request documentation relating to:

- plan- and participant-level agreements and disclosures;
- investment policy statements;
- due diligence reports and monitoring documentation;
- fee benchmarking analyses;
- investment committee materials; and
- communications with plan sponsors concerning investment recommendations.

We have found that when financial professionals operate within loosely defined service parameters, the variability among the deliverables produced can lead to further scrutiny and requests for additional information. Where service providers operate standardized or platform-based investment programs, investigators may also evaluate whether the firm's policies and procedures (and in some cases, training) align with the services actually being delivered.

"Issues with [fiduciary] processes may be common, especially in midsize plans that may lack the resources of larger plans."

Next Steps

Banks, trust companies, broker-dealers, and RIAs should consider reviewing their investment oversight processes with a particular focus on documentation and consistency.

Key areas to evaluate include:

- Agreements – confirming the nature and scope of investment-related services;
- Conflict mitigation – documenting how potential conflicts are identified and addressed;
- Disclosures – relating to conflicts and those required by applicable PTEs;
- Investment menu governance – ensuring there is a clearly defined process for selecting and monitoring plan investments; and
- Fee and share class reviews – confirming that investment expenses are periodically evaluated for cost efficiency and any revenue sharing is used in a way that clearly benefits participants and beneficiaries.

As always, PRI will continue to monitor developments and update members accordingly. If you have any questions, please give us a call or email info@pension-resources.com.

About PRI – Pension Resource Institute is a leading ERISA compliance consulting firm specializing in regulatory strategy, training and practice management for financial institutions. We support Member Firms representing over 50,000 financial professionals, from large broker-dealers to hybrid and independent RIAs, banks, and trust companies.

PRI helps firms grow and manage their retirement business through a curated and configurable compliance framework, practical resources, and client-facing tools. Members receive unlimited consulting and proactive insights on evolving legislation, regulation, litigation, and best practices assuring they stay compliant and competitive.

© 2026 Pension Resource Institute, LLC – All rights reserved.