

## News

# Kaleda Comments on the Role of the Adviser Post Fiduciary Rule

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Principal David Kaleda was quoted in the PLANADVISER article, “The Roll of the Adviser: Money in motion through rollovers and other means,” where he discussed employers considering distribution-phase issues and their expectations for advisers with regard to educating their participants on distribution options.

“There’s no doubt that, because of the DOL rule, employers are now very aware that [advisers] could be talking to their participants about rollovers,” said David Kaleda. “Some of them like the idea that if anybody is going to offer their participants rollover recommendations, he should always act in the participants’ best interests. It will be interesting to see if many sponsors insist that you, as an adviser, have to contractually agree to act as a fiduciary if you want to give their participants advice on rollovers.”

In considering whether providing rollover education as an option, Kaleda goes on to say, “You don’t say what the participant should do. You describe what the participant could do. And you describe the pros and cons of each option in a balanced way.”

Kaleda also commented on the intersection of the DOL requirements and FINRA’s requirements. “You could read the DOL regs to say, ‘I can make recommendations without crossing the fiduciary line, and thus a prudent process under ERISA is not required,’” Kaleda adds, regarding advisers who decide to give fiduciary advice on distribution options. “But FINRA has said that if you recommend that an investor do a rollover, and in that context you make a securities recommendation, you have to have some process in place.”

“It is pretty clear what FINRA thinks: You have a ‘suitability’ obligation that requires you to have a solid process to establish why your recommendation is in the interest of the investor,” Kaleda says.

Looking ahead, Kaleda ends by noting that there’s been concern within the industry that DOL staff no longer supports the previously issued Advisory Opinion 2005-23A, given their formation of the revised fiduciary rule. “Some folks are hoping the DOL clarifies where it stands on that,” he added.