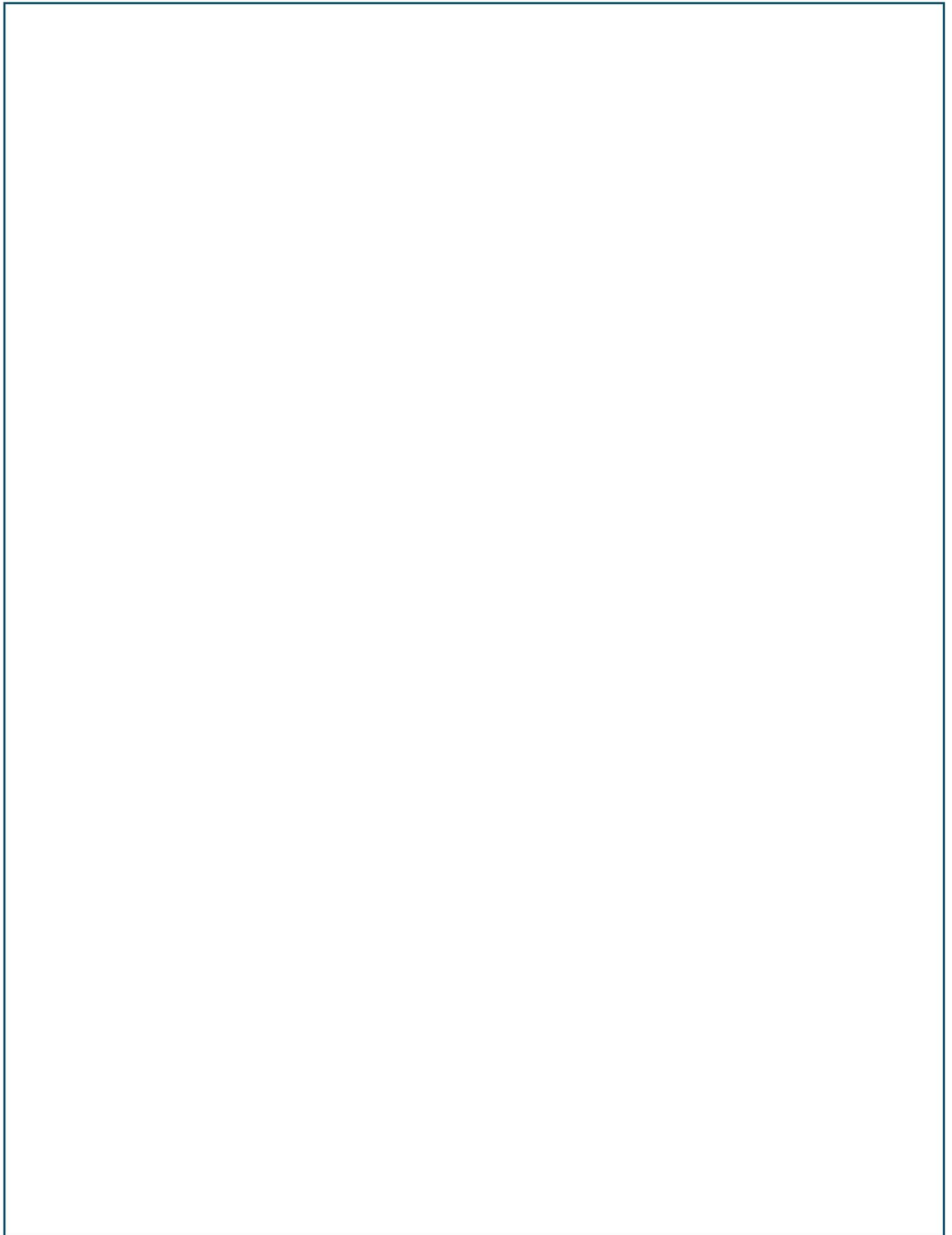




# INCLUDING RETIREMENT PLANS IN YOUR BUSINESS MODEL



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**A**s a financial professional, delivering new value-added offerings is an integral part of attracting and retaining clients. Today, a large portion of investable assets is going into retirement plans. Adding this business model to your offerings will allow funds to be engaged now, and can increase your assets under management. Additionally, many plan sponsors are seeking advisors to provide and accept fiduciary responsibilities. Advisors will need to make an informed decision about whether they want to accept this fiduciary responsibility. There have been many articles and publications regarding the definition of fiduciary and the implications for advisors. Below is a synopsis of the highlights of the recent news related to fiduciary responsibility.

To understand the current industry positions on the definition of fiduciary, it's important to go straight to the source. Currently, both the Employee Retirement Income Security Act (ERISA) of 1974, administered by the Department of Labor (DOL), and the Investment Advisers Act of 1940, administered by the Securities and Exchange Commission (SEC), outline different definitions of a fiduciary.

The Investment Advisers Act of 1940 outlines that an investment advisor owes a fiduciary duty to all of their investment advisory clients. In their definition, this means that you must act in the client's best interest. If there are conflicts of interest that would prevent you from acting in their best interest, you must mitigate, or at the very least, expose those conflicts so the client can make an informed decision about whether or not to hire you.

ERISA rules are more complicated and the limits that apply to fiduciaries, particularly in terms of their compensation, are stricter. The definition of fiduciary in ERISA is outlined in what is frequently referred to as the five-part test. It currently defines a fiduciary under the following parameters:

- Provide advice with respect to the value of securities or make recommendations about the advisability of investing in, purchasing, or selling securities
- Provide advice on a regular basis
- Provide advice pursuant to a mutual agreement or arrangement with the plan
- The plan uses the advice as a primary basis for their decisions about plan assets
- The advice is individualized based on particular needs of the plan

If you engage the plan as an investment advisor through an advisory or consulting contract and you provide individualized advice to the plan or the

participants on a regular basis, you would be considered a fiduciary under ERISA and SEC standards.

However, many advisors engage the plan through serving as the registered representative of record on the account but do not provide advice on a regular basis or pursuant to an agreement or understanding. Therefore, these advisors are not considered fiduciaries to a plan. It is possible to limit the assistance you provide to a plan and participants as education and still be successful in providing service to the plan.

Advisors will need to make a decision as to whether they would like to structure their service to plans as education or ongoing advice. In order to make that decision, an advisor will need to know the ramifications of acting as a fiduciary. The main issues that would prevent an advisor from acting as a fiduciary are the responsibilities of a fiduciary and the related ERISA prohibited transaction rules.

## DETERMINING WHETHER OR NOT TO SERVE AS A FIDUCIARY

Although it plays an important role, the definition alone will not enable advisors to make the decision as to whether or not they want to serve as a fiduciary. This decision should be based on what can be delivered to clients and the level of involvement advisors want to have with clients. Serving as a fiduciary requires advisors to give plan beneficiaries/participants their complete and undivided loyalty. A prudent plan must be in place to monitor investments and the costs of the plan, including advisor and plan investment fees.

Another consideration when becoming an ERISA fiduciary is the prohibited transaction rules. One prohibited transaction rule is that “you shall not cause the plan to engage in a transaction for your benefit,” which is known as “self-dealing.” In layperson’s terms, this means that a fiduciary may only receive level compensation for recommendations or advice they provide.

## WHAT IS LEVEL COMPENSATION?

Level compensation can be a flat fee, a per-hour charge, or single bps charge on all assets. For example, \$5,000 annually, \$250 per hour, or 40 bps on plan assets. Variable commissions are considered unlevel compensation and are dependent on the investments chosen by the advisor. For example, if a fund lineup offers 25 bps on one fund and 45 bps on another, the advisor may be incentivized to

recommend the one that pays 45 bps. In order to remove this conflict and the potential for self-dealing, the compensation would be levelized to 35 bps for all plan assets, regardless of how they are invested. Note that if you are providing advice outside of the plan context, this possible conflict can be addressed by providing the client with full disclosure. But ERISA’s rules are stricter. Cambridge has resources to help you determine the compensation solution that meets client needs and complies with ERISA.

## DIFFERENT FIDUCIARY LEVELS

Plan sponsors are seeking advisors to provide and accept fiduciary responsibilities, but determining at which level to serve can be challenging.

**3(21) Investment Advisor** – an advisor that renders advice to a plan for a fee. Advisors are considered to be a 3(21) fiduciary when they engage a client through an agreement, and the advice services meet the five-part definition outlined earlier. These services would typically involve selecting plan investments and presenting them to the plan trustees or committee. The plan trustees or committee are the ultimate decision makers, NOT the advisor. A 3(21) fiduciary can also provide advice to participants, but again, the participant is the decision maker about how to allocate his or her account.

**3(38) Investment Manager** – an investment manager who is presumed by definition to have actual discretion and control over the plan’s assets and management. ERISA provides that a plan sponsor can delegate the significant responsibility (and liability) of selecting, monitoring, and replacing of investments to the 3(38) investment manager.

### A 3(38) Fiduciary:

- Can only be a bank, an insurance company, or a registered investment adviser (RIA)
- Allows discretion to make investment decisions and move allocations within the plan
- Assumes legal responsibility and liability for decisions it makes which allows the plan sponsor to better manage and mitigate their fiduciary risk
- Relieves the plan sponsor from the fiduciary liability for the investment selection and plan monitoring. (The sponsor is still liable for the prudent selection and monitoring of the 3(38).)

As you may have heard, the DOL may make changes to the five-part test mentioned earlier, but it will be some time before any changes are implemented. The recent regulatory changes within the retirement arena have created speed bumps for advisors, which have led many to ask, “Can I or do I want to be a fiduciary to a retirement plan?” There is no simple answer to this question, but as the advisor, you know your business model and client base. Regardless of the legal definition of fiduciary, determining whether or not to serve as a fiduciary should be based on your capabilities to serve the client’s best interests.

Given the uncertainty about who is or could be considered a fiduciary, it makes sense to embrace acting as a fiduciary in certain circumstances, especially for large retirement plans or if retirement plans are a focus of your business. Additionally, there are many sponsor companies making changes right now in order to allow their compensation to be level to both the advisor and the broker-dealer.

Cambridge is an industry leader in fee-based advisory solutions and we have dedicated the resources to ensure our rep-advisors can provide fiduciary services to their clients. Our rep-advisors can be a fiduciary under their RIA or Cambridge’s RIA. Our E&O provides coverage for our rep-advisors to act as a fiduciary under ERISA whether they are providing services through their own RIA or Cambridge’s corporate RIA.

## **REGULATORY CHANGES**

Recent regulatory changes may make adding retirement plans to your business model seem daunting. However, they are actually a great opportunity for many advisors. If you currently service retirement plans or would like to service retirement plans, it will be important to have a prudent and documented process for how you provide the service. Education is also a very important factor so that the regulations are less daunting and more understandable. If you are able to understand your role and knowledgeably communicate the responsibilities of plan sponsors, you will have an advantage over the competition.

If you are interested in taking the next steps to build your retirement plan practice, we encourage you to keep current with updates and continue to further your education on fiduciary responsibilities. Take advantage of industry leading software tools,

education, marketing, and practice management resources that Cambridge has available to our rep-advisors at discounted rates. We are dedicated to your success and will continue to expand the tools and resources available to help you in this marketplace. We are available to guide you every step of the way - helping you identify the retirement plan business model and resources that best match the needs of your clients and business.

## **THE CAMBRIDGE VALUE PROPOSITION IN THE RETIREMENT SPACE**

At Cambridge, we embrace the fiduciary standard and are committed to offering fee-based solutions.

## **CAMBRIDGE RETIREMENT CENTER**

Our mission is to provide rep-advisors with the education and resources needed to confidently service the retirement marketplace. Led by our in-house retirement professionals who represent Compliance, Marketing, and Operations, the Retirement Center offers solutions to many retirement space challenges.

## **RETIREMENT PLAN SUMMITS**

Clients are demanding a better understanding of their financial future, and their emerging needs present opportunities for you to strengthen and expand your business. Design, sell, and service is the name of the game at these events focused on providing you with the resources and knowledge needed to expand your retirement plan business. Cambridge Retirement Plan Summits are held at different locations throughout the country and focus on topics like client acquisition, selling and servicing plans, fiduciary responsibility, product solutions, plan design, and the changing regulatory landscape.

## **MARKETING SOLUTIONS – CLIENT ACQUISITION WITH RETIREMENT QUICKPACKS**

With millions of baby boomers transitioning from accumulation to distribution, the need for retirement income planning has never been more evident. Retirees will face many uncertainties, as well as exciting opportunities, in the years ahead. The retirement income space is continually evolving as a result of more sophisticated

investment products, changing legislation, and increased longevity. Cambridge offers compliance approved, personalized marketing solutions on the topic of retirement income planning. These resources include marketing strategies, step-by-step marketing guides, suggested target markets, education materials, and personalized client materials.

## **INTEGRATED SYSTEMS – RETIREMENT PLAN ADVISORY GROUP AND FI360**

With fiduciary responsibilities being scrutinized more frequently, a designation reflecting that you have met industry and regulatory standards in this marketplace is beneficial. The Accredited Investment Fiduciary® (AIF®) designation from fi360 demonstrates that an advisor has gained advanced training and competency in the subject of fiduciary responsibility and that they have the ability to implement a prudent process into their own investment practices, as well as those of their clients. You can continue to enhance your education by reading various resources and attending educational opportunities, such as webinars or seminars, on a regular basis. Currently, Cambridge offers the AIF® designation course at the Retirement Plan Summits at a discounted rate.

If you are ready to take your retirement plan business to the next level, consider forming a relationship with Retirement Plan Advisory Group (RPAG) at a discounted rate through Cambridge. RPAG is an exclusive alliance of independent advisors inspired by an uncommon purpose: serve the retirement goals of sponsors and participants in qualified and non-qualified plans with a high standard of excellence in consulting and technology through the industry's leading practice management platform. In doing so, advisor members reach their goals of business growth and significance.

Today, RPAG represents the largest practice management platform in the U.S. for qualified and non-qualified retirement plan advisors. Core practice areas include investment due diligence and fund ranking, request for proposals and fee benchmarkings, fiduciary compliance, employee education, intensive training, national branding, sales and marketing resources, and business consulting.

## **INCOME SOLUTIONS – WEALTH MANAGEMENT TEAM**

Cambridge provides web-based tools and consultative support, as well as specialized resources targeted to assist you in delivering advanced solutions for complex goals. We have a variety of retirement income software applications available to help you create income floor strategies, show the most tax efficient withdrawal strategy, and complete the due diligence on the products that you will use during your clients' retirement. These programs offer impressive retirement planning software, interactive tools, and much more to help rep-advisors grow their retirement business.

## ABOUT CAMBRIDGE

Cambridge Investment Research, Inc, member FINRA/SIPC is an independent, privately owned broker-dealer with over 2,000 independent registered representatives and nearly \$45 billion assets under management.

Recognized in the industry as The Fee Experts<sup>®1</sup>, Cambridge provides innovative fee programs and a full menu of commission offerings to advisors across the nation. Cambridge has been ranked a fee leader among independent broker-dealers for 11 consecutive years<sup>2</sup>. [www.joincambridge.com](http://www.joincambridge.com).

### CONNECT WITH CAMBRIDGE

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<sup>2</sup>*Financial Planning magazine, June "FP50", Top 50 Independent Broker/Dealer Issue, 2001-2011.*

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