AdvisorLaw®

FIDUCIARY DUTY TRAINING SERIES

The Rollover Rules

Applying Your Fiduciary Duty to IRA Rollovers

What every financial planner must know before the next rollover conversation — and how to prove it later.

Presented by Financial Experts Network

Content adapted from CFP Board's Guide to Applying the Fiduciary Duty to Rollovers

Who is here?

Polling question

Are 401(k) Rollovers a significant part of your business?

YES

NO

Polling question

Does your firm currently require the use of PTE 2020-22 Forms?

YES

NO

WHY THIS SESSION MATTERS

The Stakes Are Real and Personal

MILLIONS

of Americans complete a 401(k) rollover every year

$100s OF BILLIONS

in assets move from employer plans into IRAs and other accounts annually

Rolling over a 401(k) is a significant financial decision as it can open the door to more investment choices and better service. However, poor or conflicted rollover advice can expose your client to real harm:



Unnecessary Costs

Higher fees with no offsetting benefit to the client.



Significant Tax Penalties

Avoidable mistakes in how the rollover is executed.



Loss of Creditor Protection

Employer plans and IRAs are not protected equally.



Other Adverse Consequences

Lost features the client actually needed or used.

SESSION OVERVIEW

What We'll Cover

By the end of this session, you will be able to:

- Understand the history of ERISA rollovers and DOL's attempted involvement and understand how ERISA distinguishes one-time rollover recommendations from fiduciary advice
- Distinguish Financial Advice from Financial Education in rollover conversations
- Identify and disclose the three sources of rollover conflicts of interest
- Apply the 7-step Duty of Care process to any rollover recommendation
- Evaluate cost the right way - as one factor, never the only one
- Build a rollover file that documents and defends your recommendation, based on the applicable facts.

Agenda

1. The History of Rollover Recommendations and ERISA/DOL PTE 2020-02 Form risks
2. Advice vs. Education — and Directed Orders
3. The Duty of Loyalty — Conflicts & Disclosure
4. The Duty of Care — the 7-Step Process
5. Documentation & Common Red Flags
6. Quick-Reference Checklist

Let Me Tell You a Story...

A 50-Year Rollercoaster: History of ERISA & the DOL Fiduciary Rule

- **1974: ERISA is Enacted.**
- **1975: The Five-Part Test is adopted by the DOL -** including a requirement that the advisor provide the advice in question on a ″regular basis″ to be deemed an ERISA fiduciary
- **2016 – DOL** attempted to Include IRAs under the ERISA fiduciary
- **2018- 2019: T**he courts in TX struck that down.
- **2020–2022: PTE 2020-02 Enacted -** The DOL attempts to expand the definition of a "prohibited transaction" to cover one-time rollover recommendations if the advisor's compensation increases.
- **2023: Legal Battles Follow -** A district court in Florida invalidates the DOL's attempt to ignore the "regular basis" element of the Five-Part Test In 2023; the DOL briefly appeals but withdraws it.
- **2024**: **DOL Issues New ERISA Fiduciary Rule -** In April, the DOL releases The 2024 Fiduciary Rule, attempting once again to redefine an "investment advice fiduciary."
- **2025: Legal Battles Follow -** Federal courts in Texas issue back-to-back stays (*FACC v. DOL* on July 25 and *ACLI v. DOL* on July 26), halting the rule indefinitely. The motions were unopposed by both the DOL and the Federation of Americans for Consumer Choice, which had challenged the regulation in court.
- **2026 DOL Removes 2024 Fiduciary Rule from CFR -**The DOL has removed the 2024 regulations from the Code of Federal Regulations, expressly reinstating regulations issued in 1975 that set forth a Five-Part test for ERISA fiduciary status of investment advice providers.

So, what now?

For years, the DOL has attempted to expand its definition of an ERISA fiduciary to include advisers who advise all types of retirement investors. These efforts have been consistently struck down by the courts, and now that expansion has been challenged and the Administration is declining to defend the expanded role.

The Regulatory Landscape

ERISA

- Fiduciary Duty Applied When 5-Part Test is Satisfied
- Applies to Employer-sponsored retirement plans (e.g. 401k, 403b)
- Creates a Private Cause of Action ⚖️👨‍⚖️

Internal Revenue Code (IRC)

- Applies to Individual Retirement Accounts (IRAs)
- No Private Cause of Action ❌

Discontinuing Use of PTE 2020-02 for Rollover Recommendations in Many Instances

What is Required by Form PTE 2020-02?

- **Financial institutions must also acknowledge, in writing, their and their investment professionals' fiduciary status under Title I of ERISA and the Internal Revenue Code, as applicable, when providing investment advice to the retirement investor**, and
- They must describe in writing the services to be provided and the financial institutions' and investment professionals' material conflicts of interest.
- They must document the reasons that a rollover recommendation is in the best interest of the retirement investor and provide that documentation to the retirement investor.
- Financial institutions must adopt policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards and that mitigate conflicts of interest and must conduct an annual retrospective review of compliance.

What's the Risk of Compliance?

- Because the Texas courts stayed the rule and it has subsequently been removed from the CFR, **investment advisers are no longer subject to the ERISA fiduciary standard when providing one-time rollover advice to plan participants or IRA owners.**
- By continuing to utilize the PTE 2020-02 disclosure form, the firm contractually accepts an ERISA fiduciary duty to clients where that duty does not currently legally apply. Such as in IRA-to-IRA rollovers or 401(k)-to-IRA rollovers when you are not the Advisor to the plan.

Summary Takeaways About ERISA and Rollovers

Rollover advice is always treated as a fiduciary act under SEC and state securities regulations, which means the fiduciary duties of requiring loyalty and care apply regardless of ERISA.

The “Five-Part Test” determines whether rollover advice is an ERISA fiduciary activity.

If you determine that you qualify as an ERISA fiduciary under the Five-Part Test, then PTE 2020-02 procedures should be followed.

Compliance is an operational decision that depends on your individual circumstances; your firm must independently decide if PTE 2020-02 is necessary.

ADVICE OR EDUCATION

PTE 2020-02 OR not; Every Rollover Conversation Starts Here

Do Nothing

Keep assets in the previous employer's plan

Roll Over to an IRA

Or purchase an Individual Retirement Annuity

Previous Employer's Retirement Plan

Roll to a New Employer Plan

If the new plan accepts incoming rollovers

Make a Withdrawal

Take a taxable distribution from the plan

The option a client chooses, or doesn't choose, is where your fiduciary duty begins.

The Line that Matters

> *"Whether Financial Advice has been provided is an objective, not subjective, inquiry. The more individually tailored the communication is to the Client, the more likely it will be viewed as Financial Advice."*

A CFP® professional should encourage anyone considering a rollover to obtain Financial Advice. General education materials are fine, but if the content, context, and presentation of a communication would reasonably be viewed as a recommendation, it is Financial Advice, whatever you call it.

Why This Matters

At all times when providing Financial Advice to a Client, a CFP® professional must act as a fiduciary and, therefore, act in the Client's best interest.

The 3 Marks of Pure Education



Provides Objective Information

About the alternatives available to the Client - no steering.



Is General - Not Tailored

Not customized to the Client or to a targeted group of persons.



Avoids Preference Language

No “If I were you, I’d see the benefit of a rollover.”

Even pure education has rules of its own:

- **Accurate & materially complete**
- **Delivered in a format the Client can understand**
- **Provided with competence**
- **Compliant with law, regulation & firm policy**

Without documentation, it’s harder to later prove that what you provided was education, not advice.

Directed Orders: Myth vs. Reality

A directed order occurs when a Client explicitly requests a rollover, not when they merely express interest. The distinction changes your obligations.



MYTH

“I have to roll over”



REALITY

A rollover may not be required.



MYTH

“I can undo this later”



REALITY

Decisions may be irreversible.

If the Client directs a rollover:

- If you know the rollover isn’t in the Client’s best interest, you must say so, including your reasoning and the consequences
- If the Client is relying on inaccurate or incomplete information, you must correct it before proceeding
- If the Client still clearly and specifically directs you to proceed, you are obligated to follow the instruction. Document the discussion and the Client’s decision
- You may elect to terminate the engagement if the Client insists on a course you believe is not in their best interest

SCENARIO CHECK

Advice, Education, or a Directed Order?

Maria mentions she's thinking about rolling her $180,000 401(k) into an IRA with your firm. You haven't yet reviewed her plan's investment lineup, fees, or distribution options.

Discuss:

- Has Maria given you a directed order, or simply expressed interest?
- What must you gather and analyze before making any recommendation?
- What would you need to document from this conversation alone?

Three Non-Negotiables

A rollover recommendation is Financial Advice subject to the full Fiduciary Duty. To satisfy the Duty of Loyalty, a CFP® professional must:



1. Disclose Conflicts Fully

Provide sufficiently specific facts so a reasonable Client can understand your Material Conflicts of Interest and the business practices behind them.



2. Obtain Informed Client Consent

Before providing any Financial Advice where you have a Material Conflict of Interest.



3. Manage Conflicts in the Client's Interest

Adopt and follow business practices reasonably designed to prevent conflicts from compromising your best-interest obligation.

Where Rollover Conflicts Hide



Rollover-Driven Compensation

A conflict exists any time rolling over assets results in compensation you (or your firm) otherwise wouldn't receive, regardless of your compensation model. Commissions and AUM fees both create this incentive.



Choice of Account Type or Compensation Model

A dual registrant has an incentive to recommend whichever account type, or compensation model pays more, even if a different one would better serve the Client.



Investment-Level Compensation

Once assets roll over, you may earn more from certain investments through sales-related compensation, proprietary products, or revenue-sharing arrangements.

Full Disclosure Isn’t a Checkbox

Naming your compensation type is not enough. Disclosure must be specific enough for a reasonable Client to understand the conflict, and how it could affect the advice they receive.



Explain Available Options

Keeping assets in place or rolling into another employer plan.



Explain Compensation Incentives

The incentive created by commission, AUM, or flat-fee models, not just the label.



Explain Investment-Selection Incentives

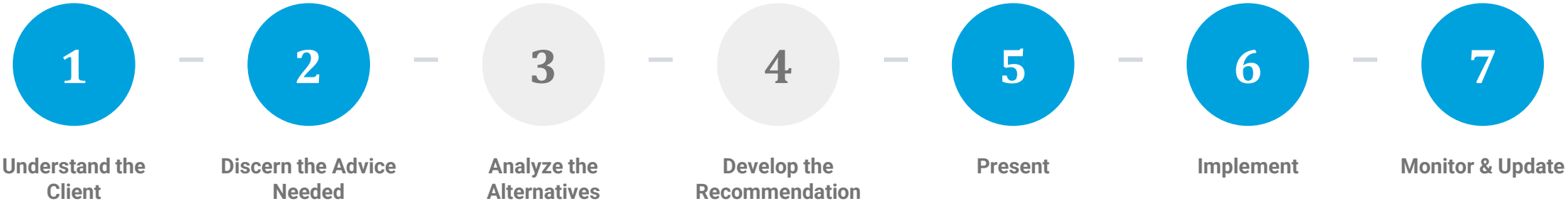
Proprietary products, revenue sharing, and other account-management incentives.



Written disclosure isn’t strictly required, but CFP Board recommends it. Oral disclosure is given only the weight CFP Board’s judgment assigns it after the fact. If it isn’t written down, you’re relying on memory to prove informed consent.

The 7-Step Roadmap

This process applies the Guide to Satisfying the Duty of Care to rollovers specifically. If the advice is part of a Financial Planning engagement, follow the deeper Financial Planning Practice Standards instead.



Steps 3 and 4 (grey) carry the most weight and the most documentation risk. We'll spend the bulk of this module there.

Know Your Client

Qualitative Factors

- [ ] Health and life expectancy
- [ ] Time horizon and goals for the assets
- [ ] Likelihood of a loan or early withdrawal
- [ ] Contemplated investment strategy
- [ ] Risk tolerance
- [ ] Desire to consolidate or simplify holdings
- [ ] Desire for additional services or advice
- [ ] Need for protection from creditors
- [ ] Satisfaction with the current plan or IRA

Quantitative Factors

- [ ] Age
- [ ] Assets in non-retirement accounts and other retirement accounts
- [ ] Liabilities
- [ ] Income and tax situation
- [ ] Capacity for risk

A CFP® professional must gather what's necessary to provide best-interest advice on a rollover. Not everything, but enough.

One Rollover, Four Linked Decisions

Sell First?

Whether to sell assets in the existing plan as a preparatory step. Most 401(k)s don't support in-kind rollovers.

Roll Out?

Whether to withdraw the assets from the existing plan and roll them over at all.

Which Account?

The account type and scope of services that would be in the Client's best interest — what the proceeds should "roll into."

Invested How?

How to invest the assets in the new account, if you're responsible for implementation.

Layered On Top of the Duty of Care

Rollover advice may also be subject to ERISA, the DOL's Prohibited Transaction Exemption 2020-02, SEC Regulation Best Interest, and the Investment Advisers Act, plus your own firm's policies and procedures. These may require additional disclosures, acknowledgments, or an annual retrospective compliance review.

Map the Alternatives

CURRENT COURSE OF ACTION

Remain in the current employer-sponsored plan (except in the case of “forced rollovers” for small account balances).

POTENTIAL ALTERNATIVE COURSES OF ACTION



Roll to a Traditional or Roth IRA

Or purchase an Individual Retirement Annuity, as appropriate.



Roll to a New Employer’s Plan

Where applicable — requires gathering information about that plan.



Roll to a Previous Employer’s Plan

Rare — most plans don’t accept incoming rollovers from separated employees. (The Thrift Savings Plan is a notable exception.)



Make a Withdrawal

E.g., net unrealized appreciation on company stock, a taxable distribution in hardship or retirement, or a substantially equal periodic payment plan.

What to Analyze About Each Option

- Asset classes & investment options
- Costs — fee schedule for the plan or account
- Distribution rules & RMD support
- Ability to borrow from the plan
- Protection from creditors, including in bankruptcy
- Availability of Roth accounts & conversions
- Services provided (investment advice, planning)
- Principal protection / guaranteed income features
- Significant holdings in company stock
- Availability of penalty-free withdrawals

Build the Recommendation

Conduct a comparative analysis of the advantages and disadvantages of each reasonably available alternative, considering the Client's individual needs.

Characteristics to weigh:

- Facilitates services the Client needs (financial planning, tax, estate)
- Ability to execute the plan or investment strategy in the Client's best interest
- Ease of loans, early withdrawals, or distributions
- Costs (see next slide)
- Benefit of consolidating accounts, reducing "orphaned" accounts
- Account types or fee arrangements reasonably available
- Need for protection from creditors
- Client preferences

There may be more than one reasonably available alternative that satisfies the Duty of Care. The goal is a defensible best-interest analysis, not a single "correct" answer.

The Cost Trap

Cost matters. Cost alone is never the whole story.



Always Consider Cost

A CFP® professional must always consider the cost of each alternative.



No Excessive Costs

You may not cause the Client to incur excessive costs relative to comparable, reasonably available alternatives.



Higher Cost Needs a Basis

You must have a reasonable basis to recommend the account with higher costs is in the Client's best interest.



Cost Isn't the Only Factor

A recommendation based on cost comparison alone generally will NOT satisfy the Duty of Care.

SCENARIO CHECK

Is the Higher Cost Justified?

James's 401(k) charges 0.35% annually with a limited fund menu. The IRA you're proposing charges 0.95%, but adds tax-loss harvesting, Roth conversion planning, and estate coordination James has specifically asked for.

Discuss:

- What information from Steps 1–3 supports, or undermines, this recommendation?
- What is your reasonable basis for the higher cost?
- What would you document to show cost wasn't your only consideration?

When No Option Serves the Client

If none of the reasonably available alternatives are in the Client's best interest, none of them may be recommended — not even the "least bad" option from a limited menu.

This situation can arise when a firm offers a limited account menu or product shelf. Knowing that none of the available options serve the Client does not lower the bar — it raises the question of whether a recommendation should be made at all.

You are not required to evaluate every conceivable course of action, only what a prudent professional would review under the facts and circumstances and be generally aware of what's widely available in the marketplace.

Present, Implement, Monitor



Present

Present the recommendation to the Client clearly, including the alternatives you considered.



Implement

Have or obtain the competence to implement the rollover correctly, following applicable rules to avoid inadvertent tax consequences, and recommend investments in the Client's best interest.



Monitor & Update

If monitoring is within the Scope of Engagement, review at appropriate intervals whether changed circumstances warrant an update.

Document Like Your License Depends On It

For Financial Advice that doesn't require Financial Planning, a CFP® professional generally is not required to present a written recommendation or document Duty of Care compliance.

Notwithstanding — CFP Board recommends documenting* how the Duty of Care process was applied, particularly Steps 3 and 4: the alternatives considered, and the reasons the rollover was in the Client's best interest.



Without contemporaneous documentation, a CFP® professional may experience real difficulty later demonstrating that the Financial Advice was in the Client's best interest. After the fact, memory isn't evidence.

Minimum practice: document the discussion, the alternatives considered, and the Client's ultimate instruction, in writing, at the time of the conversation.

**This does not mean using a previously discussed PTE 2020-02 FORM*

The Edward Jones $17M Settlement

$17M

Edward Jones — multi-state regulatory settlement, January 8, 2025, covering all 50 states, D.C., and two U.S. territories.

What Happened

- Edward Jones charged clients upfront Class A mutual fund sales charges, then moved many of those same clients into fee-based advisory accounts soon after, layering a second fee on assets that had already paid a front-end load.
- A 14-state regulatory working group found gaps in how the firm supervised and reviewed these brokerage-to-advisory transitions, especially after the 2016 DOL Fiduciary Rule sharpened scrutiny of advice tied to compensation changes.
- Edward Jones neither admitted nor denied the findings and agreed to strengthen its supervisory procedures around account-type transitions going forward.

At a Glance

January 8, 2025
Date of the multi-state settlement

14-state working group
Coordinated state securities regulators

$17 million total
≈$320K per jurisdiction across 50 states, D.C. & 2 territories

No fraud finding
Resolved as a supervisory & disclosure matter

This isn't a 401(k)-to-IRA rollover case, it's a brokerage-to-advisory account transition. It's here because the failure is the same one this guide addresses: stacking new costs onto a client's assets without a documented, client-specific comparison.

APPENDIX

Quick-Reference Checklist

Steps 1-4

- [ ] Gather qualitative & quantitative Client information
- [ ] Understand the several related recommendations a rollover requires
- [ ] Confirm applicable firm policy, laws & regulations
- [ ] Identify the current course of action and reasonably available alternatives
- [ ] Analyze the features of the current plan and each alternative
- [ ] Conduct a comparative analysis of advantages & disadvantages
- [ ] Consider cost, but never cost alone
- [ ] Confirm at least one alternative is in the Client's best interest before recommending it

Steps 5-7 & Documentation

- [ ] Present the recommendation to the Client
- [ ] Implement the rollover in the Client's best interest
- [ ] Follow applicable rules to avoid inadvertent tax consequences
- [ ] Help select investments suited to the Client's goals & risk tolerance
- [ ] Monitor and update if within the Scope of Engagement
- [ ] Document how the Duty of Care process was applied — especially Steps 3 & 4
- [ ] Document the Client's ultimate instruction, including any directed order

Red Flags: Where Rollover Advice Goes Wrong

- Treating "general education" as a shield while quietly tailoring the pitch to one Client
- Naming the type of compensation without explaining the incentive it actually creates
- Comparing cost alone, without weighing services, protections, and the Client’s stated needs
- Skipping documentation because the decision "wasn’t a big deal"
- Recommending a rollover before confirming whether it was a directed order or just interest
- Assuming a rollover is required, or that a decision can always be undone later

THE BOTTOM LINE

Key Takeaways

- Rollover recommendations may not to trigger ERISA fiduciary status, if not, you may not want to trigger it by contract.
- Every rollover recommendation is **Financial Advice, and it is fiduciary, full stop.**
- Disclosure means explaining the incentive your compensation creates, not just naming the compensation type.
- Cost always matters. Cost alone never justifies a recommendation.
- Document the alternatives you considered, and why you didn’t recommend them, while the reasoning is fresh.
- There’s often more than one right answer. There is always a wrong process.

FIDUCIARY DUTY TRAINING SERIES · COMPANION MODULE

Four Rollover Scenarios

Fiduciary Duty in Practice: When It's Wrong, When It's Right

A companion to The Rollover Rules: see how the Duty of Loyalty and the Duty of Care play out with four different types of clients, including one where the rollover is clearly the right call.

*Presented by **Financial Experts Network***

Client names and details below are illustrative composites created for training purposes only — not real clients.

BEFORE YOU BEGIN

How These Examples Work

Each scenario below presents a different type of client and a different fiduciary pressure point. For each of the first three, you'll see an improper approach that fails the Duty of Loyalty or Duty of Care, against a proper, defensible approach. The fourth shows what it looks like when that same process leads to a clear "yes."



Example 1 — The Career Changer

Tests: Advice vs. Education, the four rollover options, and directed-order myths.



Example 2 — The Pre-Retiree with Company Stock

Tests: the NUA alternative, the Cost Trap, and a full comparative analysis.



Example 3 — The Business Owner

Tests: account-type/compensation-model conflicts and creditor protection.



Example 4 — The Clear-Cut Case

Tests: recognizing and documenting when a rollover genuinely is the client's best interest.

EXAMPLE 1 OF 4

The Career Changer



Jordan

Age 34 · Changing jobs

- $45,000 in his former employer's 401(k)
- Current plan expense ratio: 0.08%
- New employer's plan accepts rollovers, similar low-cost lineup
- Hasn't said he wants to roll over, just isn't sure what to do

THE SITUATION

"Hey, what should I do with my old 401(k)?" Jordan emails his advisor after starting his new job. He hasn't requested a rollover, just asked a question.



What's Being Tested

Advice vs. Education, the four rollover options, and the directed-order myths from Module 1.

EXAMPLE 1 OF 4

Jordan: Improper vs. Proper

✕ IMPROPER APPROACH

1. Treats “what should I do?” as license to sell a rollover - never confirms whether Jordan wants education or a recommendation
2. Presents only one option: rolling into an advisory IRA. The other three options are never mentioned
3. Mentions “there’s a fee” without explaining the incentive it creates or the cost gap versus the 0.08% plan
4. Never documents the conversation or what Jordan actually decided

✓ PROPER APPROACH

1. Clarifies whether Jordan wants general education or a specific recommendation before saying anything else
2. Gathers Jordan’s goals, risk tolerance, and satisfaction with the new employer’s plan (Step 1)
3. Walks through all four options — including staying put or rolling to the new low-cost plan
4. If recommending the IRA, discloses the AUM fee, the 0.08% vs. ~1% cost gap, and the specific incentive — in writing
5. Documents the options discussed and Jordan’s final decision

EXAMPLE 2 OF 4

The Pre-Retiree with Company Stock



Renata

Age 61 · Retiring in 8 months

- $820,000 total 401(k) balance
- $180,000 of that is employer stock — cost basis $40,000
- Wants to simplify everything before she stops working
- Hasn't considered the tax treatment of the stock specifically

THE SITUATION

Renata wants to consolidate her accounts before retirement. Buried inside her 401(k) is a sizable position in company stock, trading well above what she originally paid for it.



What's Being Tested

The NUA alternative, the Cost Trap, and a full Step 4 comparative analysis.

EXAMPLE 2 OF 4

Renata: Improper vs. Proper

✕ IMPROPER APPROACH

1. Recommends rolling 100% of the balance, including the company stock, straight into an IRA, without evaluating net unrealized appreciation (NUA)
2. Bases the recommendation mainly on comparing the IRA's advisory fee to the plan's admin fee
3. Never explains the tax trade-off Renata gives up by rolling the stock over instead of taking a distribution
4. No documentation of why rolling the full balance, stock included, was said to be best for Renata

✓ PROPER APPROACH

1. Gathers Renata's full picture: the stock's cost basis and value, her income needs at retirement, her tax bracket
2. Analyzes the NUA alternative for the company stock specifically, separate from the rest of the balance
3. Explains the trade-off plainly: ordinary income now on the cost basis vs. capital-gains treatment later on the appreciation
4. Weighs cost together with tax treatment and Renata's goals, never cost alone
5. Documents the alternatives considered (full rollover, NUA distribution, partial rollover) and the reasoning behind the final recommendation

EXAMPLE 3 OF 4

The Business Owner



Marcus

Age 52 · Owns a contracting business

- Meaningful personal liability exposure from the business
- $1.4M in his company's 401(k) plan
- His advisor is a dual registrant — broker-dealer rep and IAR
- Wants to simplify his finances as he scales the business

THE SITUATION

Marcus asks his advisor, who can open either a brokerage or an advisory account, whether he should roll his 401(k) into an IRA now that he's consolidating his finances.



What's Being Tested

Conflicts arising from account-type or compensation-model choice, and creditor protection as a Step 1 factor.

EXAMPLE 3 OF 4

Marcus: Improper vs. Proper

✕ IMPROPER APPROACH

1. Recommends an advisory (AUM) IRA, the account type that pays the advisor more, without mentioning that incentive
2. Never raises creditor protection, despite Marcus's known liability exposure as a business owner
3. Discloses compensation only verbally, and only in generic terms ("we get paid based on assets under management")

✓ PROPER APPROACH

1. Specifically asks about Marcus's creditor exposure as a business owner during Step 1
2. Explains the creditor-protection trade-off: unlimited federal protection in the ERISA plan vs. IRA protection that varies by state and is capped under federal bankruptcy law
3. Fully discloses, in writing, the account-type/compensation-model conflict created by being a dual registrant and the specific incentive it creates
4. If still recommending the rollover, documents the specific reasons it remains in Marcus's best interest despite the trade-off

EXAMPLE 4 OF 4

The Clear-Cut Case



Diane

Age 67 · Recently retired

- Three old 401(k)s from past employers, roughly $340,000 total
- No company stock, no outstanding loans, minimal creditor-protection need
- Wants Roth conversions and coordinated income planning before RMDs
- None of the old plans can transfer to each other or offer planning services

THE SITUATION

"I have three old 401(k)s from jobs I left over the years, and none of them talk to each other." Diane retired six months ago and wants one coordinated plan for retirement income, taxes, and Roth conversions.



What's Being Tested

Recognizing and documenting when the Duty of Care process genuinely points to a rollover.

EXAMPLE 4 OF 4

Diane: Why the Rollover Is the Right Call

THE PROPER PROCESS

1. Gathers Diane's full picture: three orphaned plans, no company stock, minimal creditor-protection need, and an upcoming Roth-conversion window before RMDs and Social Security
2. Confirms the current course - assets scattered across three plans that can't transfer to each other - can't deliver the coordinated planning Diane wants
3. Compares each plan's costs to the proposed IRA; the modest fee increase is tied directly to services Diane will actually use
4. Confirms nothing is being given up: no NUA to forgo, no meaningful creditor-protection difference, no unique plan features lost
5. Documents the plan-by-plan comparison, the alternatives considered, and why consolidating is in Diane's best interest, in writing, before acting

WHY THIS CASE IS CLEAR-CUT

- Multiple small, scattered accounts that can't be consolidated any other way
- No company stock or NUA opportunity being forgone
- No meaningful creditor-protection trade-off for this client
- Added cost is tied to specific services the client will use, not fees for their own sake
- Client explicitly wants ongoing planning her old plans cannot provide
- All four options were still considered and ruled out for documented reasons

A clear-cut case still requires the full process. It's clear because the Duty of Care process was followed, not because it was skipped.

SYNTHESIS

What “Proper” Always Includes

Confirm Advice, Education, or a Directed Order

Before proceeding, know which one you’re actually providing.

Consider Every Reasonably Available Alternative

Not just the one that’s easiest nor most profitable to recommend.

Disclose the Specific Incentive

Not just that a conflict exists, but how it could shape the advice.

Weigh Cost Together With Client Needs

Cost is always a factor. It is never the only one.

Document the Alternatives and the Reasoning

While the conversation is fresh, not after the fact.



Which of these pressure points is easiest to miss in your own practice, and what would change in your process if a regulator reviewed your file next week?

Financial Experts Network

Client names and details throughout are illustrative composites created for training purposes only.

Where This Content Comes From

Primary Source

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Secondary Source

The CFP Board presentation has been edited mildly, by AdvisorLaw to provide additional background and risk analysis.

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Questions & Discussion

Thank you for joining this session.

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