How is the term ‘recommendation’ defined under the new rule?
The definition of a “recommendation” is fairly broad under the new rule. It’s defined as a communication where, based on its context, content, and presentation, would reasonably be viewed as a suggestion that someone take action or not take action. And the more personalized those communications or suggestions, the more likely they’ll be considered a recommendation.

What do financial professionals need to do differently?
The new rule raises the bar for financial advisors providing advice to retirement plans or about IRAs. Advisors are going to need to justify their recommendations very clearly in terms of how they can mitigate and manage potential conflicts of interest while providing advice. They also need to document their recommendations and make sure these recommendations are prudent, meaning they’re well researched and in their clients’ best interest. As a result, client investment objectives and time horizons as well as the costs of investments must be taken into consideration.

How could this impact compensation for financial professionals?
There is a broad view of the definition of compensation, so advisors also are going to have to be clear in terms of how they’re being compensated for their services and how they’re going to mitigate any potential conflicts of interest.

For example, some advisors who are paid on a level-fee basis may be less affected, but Vanguard would caution against thinking that they’re unaffected. The DOL views asset gathering as a potential conflict of interest, where someone is paid an asset-based fee, because the more assets you have under management, the more you might get paid. And so a rollover conversation in that context could lead to a conflict that requires compliance with a prohibited transaction exemption.
What is the impact on small plans?
The DOL was particularly concerned about protecting small plan sponsors, and in many respects, the final rule treats plans with less than $50 million as if they were individual investors.
If a provider or advisor wants to avoid fiduciary status with a plan sponsor under $50 million, they have to limit their investment communications to purely educational material.

What opportunities are there under the final rule for financial professionals?
Vanguard encourages financial professionals to always put the interests of their clients first. Financial professionals also should use this opportunity to confidently talk about their value propositions. No matter what fee structure they’re under or what obligations they have, financial professionals must have their clients’ best interest at heart and provide a great deal of value.

The new rule also may present more opportunities for financial professionals to advise small-market plans if they are willing to accept fiduciary status. Providers who are serving small-market plans but want to avoid fiduciary status may find it easier to deal directly with a financial professional who can serve as the fiduciary for the plan.

There also may be more opportunities for advisors to transition their businesses to a fee-only model because of the final rule’s more stringent requirements for commission-based services. But not every client will be moved to a fee-based account as it may not be appropriate, particularly for low-balance, low-activity clients.

Transitioning to the new rules
The rule’s requirements will not begin to take effect until April 2017 and the new prohibited transaction exemptions will be phased in between April 2017 and January 1, 2018. Vanguard advises that financial professionals use this time to transition to the new environment.

For more information about the new rule and its impact on small plans, please contact us at retirementplanaccess@vanguard.com or 800-684-401K.