



Significant Changes in Final DOL Fiduciary Rule

| ISSUE | DOL FINAL RULE |
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| CONTRACT REQUIREMENTS UNDER THE BIC | |
| Contract requirement is too restrictive and could prevent normal pre-contract communications | For new clients, the contract may be signed at any time before the transaction, as long as it applies retroactively to any advice provided up to that point |
| Contract between advisor and client is too burdensome; may not be operational in call center context | The contract is between the firm and the client, and a new contract will not be required for each interaction with a different employee of the same firm |
| Contract requirement by all current clients is onerous and costly | For existing clients, notification and negative consent can be used, where no signature is required |
| EDUCATION | |
| Need to establish a clear line between education and advice | Clearly describes the types of information that are non-fiduciary education—the DOL used FINRA’s definition where a recommendation must be a specific call to action |
| Advisors should be able to educate clients by using asset allocations with specific fund recommendations | Asset allocation models can identify specific investment alternatives under ERISA-covered plans, but not IRAs |
| “HIRE ME” CONVERSATION | |
| An advisor should be able to recommend that the customer hire the advisor without fiduciary liability | An advisor or firm can recommend that the customer hire the advisor without the recommendation counting as a fiduciary recommendation, as long as no investment advice is provided |
| COMMISSION-BASED ADVICE | |
| The requirement to recommend products in the client’s best interest may force advisors to recommend more expensive fee-based accounts | Rule specifically provides that Advisors may continue to receive commissions under the BIC exemption. If a recommendation to switch from a low activity commission-based account to an account that charges a fixed percentage of assets under management is not in the customer’s best interest it may constitute a prohibited transaction. |
| PROPRIETARY PRODUCTS | |
| The requirement to recommend products in the client’s best interest may force advisors to recommend other company’s products | Advisors may continue to sell proprietary products under the BIC exemption. The DOL provides specific guidance for the sale of proprietary products under the BIC. |
| IMPLEMENTATION AND ENFORCEMENT | |
| Eight months is too short a time period to implement the requirements of the rule | Establishes a one-year implementation period and a phased-in enforcement period for BIC requirements. Rule will be fully enforceable by January 1, 2018. |
| SMALL BUSINESSES | |
| Small plans may be deprived of advice because they are not able to rely on the BIC | Advisors to small participant-directed plans can rely on the BIC |
| Small plans may be deprived of advice because they are not able to use the seller’s carve-out | Extends the “seller’s carve-out” to any plan that is represented by an independent fiduciary with financial expertise that satisfies specified criteria or has \$50M in assets |

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Significant Changes in Final DOL Fiduciary Rule (cont.)

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|---|---|
| DISCLOSURE AND RECORD-KEEPING | |
| <p>Disclosure and record-keeping requirements of the BIC are overly burdensome, costly and possibly conflict with SEC and FINRA rules</p> | <p>Eliminates requirement for 1-5-10 year projections on earnings and annual disclosure requirement. Clarified that individualized information about Advisors is not required. Removed the requirement to retain detailed information on inflows and outflows. Firms/Advisors must retain data sufficient to show compliance with the rule.</p> |
| <p>Minor mistakes in disclosure can lead to excise tax penalties and could prevent Advisors from relying on the BIC</p> | <p>Advisors can correct minor disclosure violations without penalties</p> |
| LEVEL FEE ADVICE FOR ROLLOVERS | |
| <p>Advisors will be discouraged from making recommendations to plan participants to move into an investment advisory arrangement with a level fee</p> | <p>Rule creates a special provision for level fee fiduciaries to exercise the BIC exemption which only requires that documentation be kept to show why a recommendation to roll over from a plan or IRA to a level fee arrangement was in the client's best interest</p> |
| LIFETIME INCOME PRODUCTS | |
| <p>The focus on fee transparency in the re-proposed rule disadvantages lifetime income products where the fees might not be as easily understandable to consumers</p> | <p>PTE 84-24 includes a streamlined exemption for recommendations of "fixed rate annuity contracts" which are less complex lifetime income products; Variable and indexed annuity products can be sold under the BIC exemption requirements</p> |
| ASSET LIST IN BIC | |
| <p>Restricting certain asset classes covered by the BIC Exemption limits investor choice</p> | <p>Restrictions on asset classes that can be recommended under the BIC were removed</p> |
| GRANDFATHER CLAUSE | |
| <p>The new requirements of the BIC could disrupt current client relationships and interfere with transactions paid for before the rule goes into effect</p> | <p>Allows additional compensation based on investments made prior to the enactment of the rule</p> |