

The Department of Labor Best Interest Ruling

At more than 1,000 pages, the new fiduciary rule issued by the U.S. Department of Labor (DOL) will take some time to digest and implement. Keeping in mind that the DOL rule may still be subject to legal and legislative challenges, advisors should familiarize themselves with the rule's key points.

The rule takes effect on April 10, 2017, with a transition period for implementation of certain provisions that lasts until January 1, 2018.

RETIREMENT ONLY – The DOL rule applies to suggested recommendations regarding who?:

Retirement assets and plans

- Retirement plans covered by the Employee Retirement Income Security Act (ERISA plans)
- Individual retirement accounts (IRAs)
- ERISA plan and IRA investments



Movement of retirement money

- Rollovers and distributions from an ERISA plan or IRA (including RMDs)
- Selection of accounts or another person to provide retirement advice

If you're an advisor and answer "YES" to these two questions then you have a fiduciary relationship with your clients and are required to provide advice that is in your client's best interest under the newly expanded DOL guidelines.

WHO IS A FIDUCIARY?



1. **Who:** Do you talk to ERISA plan sponsors, participants or beneficiaries, IRA owners, or fiduciaries of ERISA Plans?

Note: certain conversations with participants or beneficiaries could result in fiduciary status regardless whether they're in an ERISA or non-ERISA plan.

2. **What:** Do you talk to any of these people about ERISA plan or IRA investments, rollovers, distributions, or selecting another person to provide investment advice?

Note: certain conversations with participants or beneficiaries could result in fiduciary status regardless whether they're in an ERISA or non-ERISA plan.

IMPORTANT NOTE:

The DOL's definition of "compensation" is so broad that it will almost always be found that an advisor and/or financial institution received compensation related to any suggestions made.

New tool of the trade: the BICE

The Best Interest Contract Exemption (BICE) allows fiduciaries to receive varying compensation when they provide advice in the best interest to clients. This means recommendations are prudent, statements cannot be misleading and advisors avoid material conflicts of interest, acting without regard to their own or their financial institution's interests. The compensation must be reasonable under the new rule and disclosed to clients.

A contract is also required by the BICE that outlines the advisor's and financial institution's responsibilities to the client as a fiduciary. While advisors will be fiduciaries anytime advice is given about retirement assets and plans, the contract does not have to be finalized by the financial institutions with the client until they open an account or make an investment. Multiple advisors with the financial institution can work with a single client without having to sign contracts for each advisor relationship.

Are you a level-fee fiduciary?

An advisor can qualify as a “level fee fiduciary” for certain transactions. In these cases, the client does not have to sign an actual contract, but some other requirements of best interest standards still apply. As the name suggests, level fee fiduciaries receive a set fee as compensation that does not vary regardless of the investment involved, which must be disclosed in advance.

WHO IS A FIDUCIARY?



Important: Advisors who are not level fee fiduciaries must use the BICE for discussions regarding indexed or variable annuities that are all or part of an IRA or ERISA plan. For fixed annuities, while the BICE is available, there are also less restrictive alternative exemptions available.

Document it

Advisors should document their suggestions, why those suggestions were prudent, and how they were able to make the suggestions without regard to the impact on their own or their financial institution's compensation.

Adjustments ahead

The new rule means financial professionals will have to adjust by taking on new responsibilities and consider changes to their business model. Firms — and the industry — will be analyzing and adapting to the rule over the next several months. Here are five key decisions firms are considering to remain in compliance:

- How should we evolve our compensation practices
- Will we utilize the BICE?
- How will the proposed exemptions apply to our current and future business processes?
- How will we educate and train our advisors?
- How will we evolve our compliance policies and procedures?

Next move SEC? The U.S. Securities and Exchange Commission is expected to release its own fiduciary standards. As experts have pointed out, if two significantly different standards are created, one for managing retirement assets and one for managing all registered investments, our industry could face unique challenges.

