



DOL Conflicts of Interest Rule

What's the impact?

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Agenda

- Overview of the rule
- Anticipated industry impact
- Timeline for compliance
- Question-and-Answer

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Prior to joining Multnomah Group, Bonnie was a partner at a boutique law firm that specialized in all aspects of retirement-related products and services – working both with plan sponsors and retirement plan service providers. Bonnie has been a frequent speaker on the topic of retirement plan issues at local, regional, and national conferences and events.

Bonnie graduated with honors from Truman State University, earning a degree in Political Science, and she earned a J.D. from Pepperdine University School of Law, where she earned a certificate from the Palmer Center for Entrepreneurship & the Law and where she graduated with honors. Bonnie is a member of the State Bar of California.

Overview

- Revised definition of fiduciary under ERISA Section 3(21)(A)(ii)
- Activities that are excluded from the definition of advice/recommendation
- Inclusion of a Best Interest Contract Exemption (BICE)

ERISA Section 3(21)

A person is a fiduciary if he/she:

- Exercises discretion over the management of the plan or plan assets
- Renders investment advice to a plan or plan participant for compensation
- Has any discretionary authority in the administration of the plan

Current Test

5 part test; a person is a fiduciary if he/she gives investment advice:

1. about the value of or advisability of investing in securities or other property;
2. on a regular basis;
3. pursuant to an agreement;
4. with the understanding that the advice will serve as a primary basis for investment decisions; **AND**
5. that is individualized to suit the needs of a specific plan.

Final Test

Covered advice now includes:

- rendering investment advice for a fee (direct or indirect),
- which is per an agreement or understanding and based upon the needs of a the plan or participant, OR where the communication is specifically directed to the plan or participant, AND
- where investment advice constitutes:
 - Recommendations as to how to invest assets (including IRAs) OR
 - Recommendations as to who should invest the assets.

Activities that are *not* advice

1. Transactions with Independent Plan Fiduciaries with Financial Expertise
2. Employees to Plan Sponsors
3. Platform Providers
4. General Communications
5. Investment Education
6. Swap and Security-based Transactions

Note that certain disclosures and exceptions apply!

Best Interest Contract Exemption (BICE)

High-level Requirements of BICE Include (but are not limited to):

- Written agreement (for non-ERISA plans and IRAs)
- Adherence to impartial conduct standards
 - Advice in client's "best interest"
 - Fees not more than "reasonable" compensation
 - Statements re: recommended transaction, fee and compensation, material conflicts of interest or other relevant matters must not be misleading
- Disclose fees, compensation and material conflicts of interest
- Retain records demonstrating compliance

Impacted Parties

- Plan Sponsors
- RIAs
- Service Providers
- All Players in the Retirement Plan and IRA Market

Action Items for Plan Sponsors

- Understand the current arrangement the plan has with service providers
 - ✓ Locate the plan's providers' current 408(b)(2) disclosure(s) and agreement(s)
 - ✓ Review and understand the plan's providers' 408(b)(2) disclosure(s) and agreement(s)
- Understand how the Final Rule affects the plan's providers and how any arrangements you may have with providers may change as a result
- Review the Final Rule and understand any new obligations you may have (e.g. ongoing review of educational materials)
- Prepare yourself and your committee for novel disclosures and new agreements

Timeline

- Effective Date: June 7, 2016
- Applicability Date: April 10, 2017
 - *But, BICE Compliance Date: January 1, 2018*

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