



YOUR FINANCIAL FUTURE

Your Guide to Life Planning

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The DOL Revisits Conflict of Interest Rules

Over the past several decades, there has been a significant shift in the retirement savings landscape away from employer-sponsored defined benefit pension plans to defined contribution plans, such as 401(k)s. At the same time, there has been widespread growth in assets in IRAs and annuities.

One consequence of this change, according to the U.S. Department of Labor -- the governmental body that oversees pensions and other retirement accounts -- is the increased need for sound investment advice for workers and their families.

The DOL says its so-called "conflict of interest" rules are intended to require that all who provide retirement investment advice to employer-sponsored plans and IRAs abide by a "fiduciary" standard -- putting their clients' best interest before their own profit.

Originally proposed more than a year ago, the "final" rules -- introduced in April 2016 -- have been revised to reflect input from consumer advocates, industry stakeholders, and others. Following are some of the key takeaways from the DOL's final regulatory package.

The Role of the Fiduciary

According to the DOL's definition, "a person is a fiduciary if he or she receives compensation for providing advice with the understanding that it is based on a particular need of the person being advised or that it is directed to a specific plan sponsor, plan participant, or IRA owner. Such decisions can include, but are not limited to, what assets to purchase or sell and whether to roll over from an employment-based plan to an IRA.

¹ In this capacity, a fiduciary could be a broker, registered investment adviser, or other type of adviser.

The Best Interest Contract Exemption

The DOL's final rules include a provision called the Best Interest Contract Exemption (BICE). This exemption is intended to allow firms to continue to use certain compensation methods provided that they "commit to putting their client's best interest first, adopt anti-conflict policies and procedures, and disclose any conflicts of interest that could affect their best judgment as a fiduciary rendering advice" -- among other conditions.²

How does the BICE affect you? The contract provisions of the BICE are slated to go into effect January 1, 2018. At that time, IRA clients entering into a new advisory relationship should expect to sign the contract either before or at the time that a new recommended transaction is executed. IRA clients already working with an investment adviser as of January 1, 2018, may receive a notice from their adviser describing their new rights, but they should not be required to take any action unless they object to the terms of the notice.

Clients receiving advice about investments in an employer-sponsored retirement plan should receive the same general protections and disclosure, but should not expect to receive a contract to sign.

Education vs. Advice

The DOL's final rules clarify its position that education about retirement savings is beneficial to plan sponsors, plan participants, and IRA owners. As such, the DOL said that plan sponsors and service providers can offer investment education without becoming investment advice fiduciaries.

Further, the DOL stated that communications from plans that identify specific investment alternatives can be considered "education" and not a "recommendation" because plans have a fiduciary who is responsible for making sure the investment offerings in the plan are prudent. Since there is no such responsible fiduciary in the IRA context, references to specific investment alternatives are treated as fiduciary recommendations and not merely education.

Time to Get on Board

The new regulations are expected to take effect in the spring of 2017 (at the earliest) to allow all affected parties to adapt to and incorporate the changes.

To learn more about the new regulations and how they may affect you, visit the Department of Labor website.

United States Department of Labor, "[FAQs About Conflicts of Interest Rulemaking](#)."

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