



Significant Changes in Final DOL Fiduciary Rule

ISSUE	DOL FINAL RULE
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

Continued on following page



Significant Changes in Final DOL Fiduciary Rule (cont.)

ISSUE	DOL FINAL RULE
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>