

November 1, 2016

DOL Issues First Interpretative Guidance on New Fiduciary Rule

On October 27, 2016, the U.S. Department of Labor (the “DOL”) issued the first in a planned three-part set of FAQs on its new fiduciary rule. (For details on the fiduciary rule, see our prior [Alert](#).) The [FAQs](#) include some important clarifications, including on the types of variable compensation structures that may be acceptable under the Best Interest Contract (“BIC”) Exemption, advisor recruitment bonuses, plan fee information that will be required to give advice on IRA rollovers, certain requirements related to the BIC website and the use of dividend reinvestment programs for arrangements grandfathered from full BIC Exemption compliance. The DOL also reiterated its intent to require compliance beginning on April 10, 2017.

The most notable FAQs, and possible implications and action items for financial institutions, advisors, and asset managers, are described below.

FAQ Answer	Potential Implications / Action Items
<p>Compensation Grids: Compensation grids may be used, but should be designed to avoid incentivizing advisors to give advice that may have a disproportionate impact on their overall compensation (i.e., tiers or steps should be infrequent and provide for modest increases; moving up a grid should not retroactively increase compensation for past work).</p>	<p>Institutions that have already made preliminary decisions about changes to compensation structures should evaluate their new structures. Compensation-related policies should specifically address the monitoring of advisor behavior when an advisor is at or near the next tier or step in a compensation grid.</p>
<p>Recruitment Bonuses: Signing bonuses that are not tied to an advisor bringing accounts to the financial institution or asset/sales targets are permitted under the BIC Exemption. Back-end awards that are contingent on the movement of accounts or on sales targets are generally not permitted under the BIC, but binding arrangements entered into prior to October 27, 2016 are grandfathered, subject to the financial institution stringently overseeing and adopting special policies and procedures relating to these arrangements.</p>	<p>Institutions should stop offering new back-end recruitment bonuses contingent on the movement of accounts or sales targets immediately. Institutions with grandfathered back-end bonus structures should begin preparing new policies and procedures to monitor these arrangements.</p>
<p>IRA Rollovers: Advisors providing advice on rollovers from benefit plans into IRAs must consider the fees and expenses of the plan and the IRA in determining whether the rollover is in the investor’s best interest. If this information cannot be obtained from participant-level disclosures despite prudent efforts, then the financial institution may rely on the plan’s Form 5500 or “reliable benchmarks” on fees for similar plans, but must explain</p>	<p>Institutions that plan to give advice on rollovers should begin preparing policies and best practices for obtaining information on plan fees and expenses. Institutions that plan on giving rollover advice in reliance on the full BIC Exemption should prepare to integrate this analysis into their recommendations.</p>

<p>the limits on the data and how it concluded that reliance on the data was reasonable. Institutions relying on the “level fee fiduciary” exemption are required to document the decision-making process in writing, but all institutions must go through the analysis. (Note that the requirement for institutions relying on the full BIC Exemption to undertake this analysis had not previously been expressly stated by the DOL.)</p>	
<p>Posting Contract to Website: The requirement to post each investor’s individual BIC contract to the financial institution’s website may be satisfied by posting the form of contract along with an acknowledgement that the financial institution is bound to follow the contract. The DOL stated that the best practice is to post individual signed contracts.</p>	<p>Institutions should consider whether to build a system to capture, store and provide access to individual signed contracts or just to post the form of contract and acknowledgement instead.</p>
<p>Dividend Reinvestment Programs: The BIC permits additional amounts to be invested into grandfathered investments if those investments are made via a systematic purchase program that was entered into prior to April 10, 2017. The FAQs clarify that an automatic dividend reinvestment program may qualify as a systematic purchase program.</p>	<p>Asset managers that permit investors to elect to reinvest dividends or other distributions into their funds should consider having these investors enter into automatic reinvestment programs prior to April 10, 2017, to avail themselves of grandfathered status with respect to any otherwise covered investment advice the managers may have given the investors in connection with the original investment, or the decision to reinvest distributions.</p>

For more information about these FAQs or the DOL’s fiduciary rule, please contact any member of Ropes & Gray’s [ERISA practice group](#).