15 QUESTIONS ABOUT THE DOL RULE

THESE ARE THINGS EVERY FINANCIAL ADVISOR SHOULD ASK THEIR BROKER DEALER ABOUT FOLLOWING THE DEPT. OF LABOR RULING.

We are a full five months from the announcement of the final DOL Rule and almost a year and a half from when the department released the first draft in 2015. With seven months to go, until the rule is effective, every BD, RIA and insurance company should be in the process of implementing its plan to comply by the effective date. Some firms have publicly announced their plans including: their intention to use a full BICE contract on everything (including fee-based advisory accounts). Others have announced that they will limit product sets for the BICE and yet others have decreed that accounts below some minimum size will not be allowed after the effective date.

- See Article on Insurance Company-owned BDs plans to use full BICE contracts Read here
- Edward Jones plans to limit account types and sizes under DOL Read here
- Raymond James and LPL's warnings to shareholders of ominous DOL effects Read here

It is already clear that there will be a wide variance in how firms adopt to the rule, so it is essential that every financial advisor get a specific understanding how his or her BD, RIA or insurance companies plan to comply and that they understand impact their practice. The questions below are by no means the only questions advisors should ask, but they are some of the important ones that every firm with a cogent plan for dealing with the DOL rule should be able to answer at this point. It is also incumbent on every advisor to ask for specific responses. Some of the answers may not be ones that advisors like, but failure of a key business partner to answer these basic questions at this point must indicate one of two troubling conclusions: the firm is does not yet have a basic plan for dealing with the fundamental changes required by the rule, or it lacks transparency in sharing its plans with advisors. This second conclusion may indicate that it is holding this information from its advisors until a point in time, when its advisors will have no options but to consent to what the firm announces.

**Basic response to the rule:** The DOL rule creates an outright ban on any direct or indirect compensation coming as result of advice concerning distributions from qualified plans or IRAs (classifying them as prohibited transactions). The only way compensation can be earned is via one of a few proscribed "exemptions": Full BICE with a contract, Level-fee Fiduciary Exemption, Grandfathered Transactions and 8-24.

1. Will our firm create an option for its advisors to qualify as a level-fee fiduciary under the rule by April 2017? (This option allow avoids some of the most troublesome aspects of the full BICE Contract, including filing with DOL and the written continuing right for clients to bring class action litigation.)
2. If the answer is yes, will this level fee option include fee-based variable annuities?
3. If the firm is offering a level fee fiduciary option, how much latitude will our branch have in building a fee schedule that is specific to our local service offering and allow for differentiation of fees for qualified plans vs. IRA accounts?

**Changes in Advisor Compensation:** Firms wishing to use BICE, must also file with the Department of Labor a plan for Impartial Conduct standards, which assures that only "reasonable compensation" may be paid and that removes any incentives, bonus or trips that might influence the recommendation of an advisor. As a result, almost every broker-dealer and investment advisor will change compensation on investment of qualified dollars, using something known as product neutral compensation grids. The key question is what will change at your firm make in how you are compensated?
1. When will our firm announce its plans regarding changes in advisor compensation on sales to IRA and qualified plans?

2. What will our product neutral compensation grid be?

3. Does the firm plan to attempt to grandfather some existing accounts and, if so, will there be any changes in compensation that will also impact grandfathered accounts?

4. Will the change in compensation apply to accounts that are non-qualified as well? (Does the firm intend to create product neutral compensation grids for accounts not directly impacted by the rule?)

5. Are there any other changes in how our branch will be paid on non-qualified accounts?

**Product sets available after effective date for qualified money:** Because every firm will have to warrant that every investment recommendation is in the “client’s best interest,” firms are likely to reduce the number of choices they offer after the rule goes into effect so that there are not choices that will be called into question (example L share annuities or non-traded REITS). They will also likely reduce product sets so as not to have to detail costs and compensation on every product via the public website that they have to create under the rule.

1. What products will our firm make available to individual IRA investors under the rule?

2. What 401(k) products will be available?

**Meeting Best Interest determination on all new qualified sales and rollovers:** By far the largest change for advisors under the rule will be the requirement documenting why the rollover is in the client’s best interest. This impacts every firm be it RIA, BD or insurance company. ERISA Commentators almost universally agree that this will create a need for a Chief Conflicts Officer, who will need to separately review recommendations of the advisor. The Best Interest’s rollover analysis will need to include the following: must document the reasons why the investment, identifying the consequences of alternatives to the recommendation (such as leaving the money in the plan); any fees and expenses associated with the plan and the IRA, whether the employer pays for some or all of the plan’s administrative expenses; the different levels of services under the plan and the IRA; and different investments available under each option.

1. Who will make this determination at our firm?

2. How will this analysis work?

3. What help will the firm provide in getting the required information about the costs and features of the investment or 401(k) where the money currently is held?

4. What services does the firm offer that can help increase value for clients so that a best interest determination can be made to allow the advisor to assist the client?

5. Will the Broker-dealer require me to look to them for a best interests and reasonable compensation determination on transactions of my RIA?