

Implementation of the Department of Labor (“DOL”) Fiduciary Rule

Implementation Date

The first phase of the DOL’s fiduciary rule is scheduled to be implemented on **June 9, 2017**.

Transition Period Dates

The transition period starts on **June 9, 2017** and continues until at least **January 1, 2018**.

Which parts of the Fiduciary Rule are applicable during the Transition Period?

- On June 9, 2017, the expanded definition of “fiduciary” goes into effect. You will be deemed a “fiduciary” if, for compensation, you provide advice or recommendations to a retail retirement investor about investments or investment strategies.
- Also becoming applicable on June 9, 2017 are the impartial conduct standards (the “Impartial Conduct Standards”) described in the two new prohibited transaction exemptions adopted by the DOL: the Best Interest Contract Exemption (“BIC Exemption”) and the Principal Transactions Exemption (“Principal Transactions Exemption”).
- The **Impartial Conduct Standards** require fiduciaries to:
 - Act in the “best interest” of the client.
 - Charge only reasonable compensation.
 - Avoid any misleading disclosures regarding investment products and fees and any material conflicts of interest that might affect the fiduciary.
- The contract and disclosure provisions of the BIC Exemption and the Principal Transactions Exemption will not be implemented on June 9. As a result, starting on June 9, fiduciaries may make recommendations to retail retirement investors:
 - As level fee fiduciaries who receive only a level fee (e.g., a fee based on a fixed percentage of assets under management) and no other fees in relation to the account (e.g., no 12b-1 fees); or
 - As fiduciaries to commissionable accounts, provided they adhere to the Impartial Conduct Standards. Fiduciaries to commissionable accounts will not be required on June 9 to comply with the other conditions of the BIC Exemption and the Principal Transactions Exemption.

Best Interest Contract Exemption Requirements

Complying with the Impartial Conduct Standards, fiduciaries may use the BIC Exemption during the Transition Period to receive commissions or other forms of variable compensation for transactions effected on an agency or riskless principal basis.

Principal Transactions Exemption Requirements

By complying with the Impartial Conduct Standards, fiduciaries may use the Principal Transactions Exemption during the Transition Period to sell investment products to retail retirement accounts on a principal basis, provided that the transaction involves financial instruments that are within the limited scope of the Exemption.

The exemption is available only for (i) “Debt Securities,” defined to include U.S. Treasury and agency securities and U.S. dollar denominated debt issued by a U.S. corporation in an SEC-registered offering, (ii) CDs, (iii) UITs, and (iv) such other securities as the DOL may determine.

What should I do to meet the Impartial Conduct Standards?

In addition to thorough product diligence, fiduciaries relying on the Impartial Conduct Standards should:

- Train sales personnel and supervisors to understand the differences between a “suitability” standard and a “best interest” standard.
- Meet with retail retirement investors regularly, seeking an adequate understanding of the client’s current circumstances and objectives.
- Evaluate the reasonableness of all compensation received by the firm for each investment product.
- Evaluate internal compensation arrangements and revise if necessary to ensure that they do not improperly incentivize sales personnel to recommend products that are not in the best interest of retail retirement investors.
- Monitor account activity with a view to detecting potential deviations from the new best interest standard.
- Be certain to provide full and timely disclosure of material conflicts of interest.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.