Frequently Asked Questions

Adapting to the Department of Labor Fiduciary Rule

Final Rule to become applicable June 9, 2017

Ultimately, you want your employees to be ready for retirement. In light of the new Rule released by the Department of Labor, below you will find answers to common questions, provided to help you prepare for the implementation of the new DOL Rule.

Q. Does this new Rule apply to all employer-sponsored retirement plans and IRAs?

A. No. In the case of employer-sponsored plans, the new Rule applies only to plans that are subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). These are generally referred to as "ERISA plans." Plans that are not subject to ERISA ("Non-ERISA plans") are excluded (with a limited exception for self-employed, or "Keogh," plans). Some examples of plans excluded from the new Rule are:

- Plans sponsored by public K-12, public community colleges, public higher education employers, and public hospitals
- Plans established for states, counties, and cities
- Non-ERISA voluntary-only 403(b) plans
- Public and private sector 457(b) plans
- Unfunded deferred compensation plans, including plans described in Code sections 457(f), 83, and 409A

Generally, rollovers to IRAs will be subject to the new Rule.

For ERISA plans, Keogh plans, and IRAs, the final Rule clarifies grandfathering of existing contracts and specifically how financial advisors can continue to serve clients in those contracts.

No matter what the plan type, we will continue to assist plan sponsors with plan solutions, investment alternatives and valuable customer services, as we have as a non-fiduciary plan provider for more than half a century.

Q. Does this impact me in 2017?

A. Yes, the Rule will become applicable June 9, 2017, with some provisions not becoming effective until January 1, 2018.

Q. Do I need to take any action now?

A. As June 9, 2017 approaches, you will want to be sure that your plan service and investment providers are taking necessary steps to comply with the relevant requirements in the new Rule. For covered plans where VALIC is a service and/or investment provider, you will know that we are prepared, because you will be receiving updates from us.

Q. How will this change affect how we do business?

A. For many plans, especially larger plans and plans utilizing certain investment platforms, there may be little change to interactions between you and your plan's service and investment providers other than exchange of certain disclosures verifying compliance with requirements applicable to those plans. For other plans, including some small plans, the Rule may make your service or investment provider a fiduciary at the plan level, and that will impact some of the services that they will be providing.

Frequently asked questions (cont.)

Q. How will you work differently with my employees?

A. Under the new rule, many recommendations – including selling investment products, recommending investment allocations, and recommending distributions and/or rollovers – may be considered fiduciary recommendations. As a result, in many cases the participant will receive additional disclosures, and in certain cases they may need to enter into a new agreement with their financial advisor.

This new alternative for complying with the DOL Fiduciary Rule is the "best interest contract exemption" (BICE). Under BICE, a service provider and/or advisor may receive different compensation based upon the recommendations made, provided that certain requirements are met. Included in the requirements are "impartial conduct standards": a best interest standard, not receiving more than reasonable compensation and not making misleading statements. Another requirement is to provide a "best interest disclosure" (BID) to a plan participant, or to provide a "best interest contract" (BIC) to an IRA owner or Keogh plan participant, prior to or at the time of a recommendation or resulting transaction. Although the exemption itself and the impartial conduct standards become applicable June 9, 2017, the DOL has delayed the applicability of the BID and BIC requirement until January 1, 2018. Thus, the new BICE disclosures and contracts will need to be provided on or before January 1, 2018. VALIC will provide all participants in covered ERISA retirement plans with copies of the "best interest disclosure" (BID) before January 1, 2018 and to new plan participants thereafter. Similarly, provision of BICs for IRAs and Keogh plans also will begin before January 1, 2018.

Q. Why is there a difference between ERISA plans, and IRAs and Keogh plans, in the use of BIDs and BICs?

A. When the "best interest contract exemption" (BICE), was proposed, the DOL made the "best interest contract" (BIC) requirement applicable both to covered plans and to IRAs. Subsequently the DOL recognized that there were already existing protections within ERISA, with the result that in the final BICE, the DOL permitted the BICE notification requirements to be satisfied through disclosures for ERISA plan participants. Those are what we call "best interest disclosures" (BIDs). Because those same ERISA requirements do not apply to IRAs, the DOL required the establishment of an enforceable contract in the case of IRAs. Those additional documents are "best interest contracts" (BICs).

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The information contained herein is general in nature and intended as education for employers/plan sponsors. If you are a member of the general public and have questions related to this topic, you should discuss your questions with your employer and/or financial professional.

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