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IN YOUR BEST INTEREST – NEW FIDUCIARY RULE

In early April, the Department of Labor issued a new “conflict of interest” rule that provides that any individual receiving compensation for providing advice that is individualized or specifically directed to a particular plan sponsor, plan participant, or IRA owner for consideration in making a retirement investment decision will now be a fiduciary. According to the Department of Labor, such investment decisions can include, but are not limited to, what assets to purchase or sell and whether to rollover from an employment-based plan to an IRA. The fiduciary can be a broker, registered investment adviser or other type of adviser.

Why the Change?

According to the Department of Labor, the basic rules governing retirement investment advice haven't been changed since 1975. Under current rules, some advisers in the retirement industry operate under a standard that requires advice to be suitable for a client, but not necessarily in the client's best interest.

A conflict of interest can occur when an adviser gets paid more for steering clients into one investment product instead of another. While not all advisers who receive such payments are providing bad advice, the new regulation will require retirement investment advisers, as fiduciaries, to always put their clients' best interest first.

The Adviser Fiduciary's Responsibility

As a fiduciary the adviser must provide impartial advice in their client's best interest and cannot accept any payments creating conflicts of interest unless they qualify for a new exemption intended to assure that the client is adequately protected.

Best Interest Contract Exemption

Under ERISA and the Internal Revenue Code, individuals providing fiduciary investment advice, including those covered by this rule, to plan sponsors, plan participants, and IRA owners are not permitted to receive payments creating conflicts of interest without a prohibited transaction exemption (PTE).

The proposed rule creates a new PTE, the “best interest contract exemption.” This new PTE will allow firms to

continue to set their own compensation practices so long as they, among other things, commit to putting their client's best interest first and disclose any conflicts that may prevent them from doing so.

Common forms of compensation in use today, such as commissions and revenue sharing, will be permitted under this exemption, whether paid by the client or a third party such as a mutual fund.



To qualify for the new “best interest contract exemption,” the company and individual adviser providing retirement investment advice must:

- Acknowledge fiduciary status for itself and its advisers.
- Adhere to basic standards of impartial conduct, including giving prudent advice that is in the customer's best interest, avoiding making misleading statements, and receiving no more than reasonable compensation.
- Have policies and procedures designed to mitigate harmful impacts of conflicts of interest and must disclose basic information about their conflicts of interest and the cost of their advice.
- Disclose material conflicts of interest, fees or charges paid by the retirement investor, and a statement of the types of compensation the firm expects to receive from third parties in connection with recommended investments. Investors also have the right to obtain specific disclosure of costs, fees, and other compensation upon request.
- Maintain a website that includes information about material conflicts of interest, a written description of

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280 Kenneth Drive, Suite 110
Rochester, NY 14623
585-340-5200
www.beltz-ianni.com

the policies and procedures that mitigate conflicts of interest, and a disclosure of compensation and incentive arrangements with advisers.

Additionally, when providing advice to an IRA owner, the company and individual adviser must commit to the above protective conditions as part of an enforceable contract. ERISA plan investors will be able to rely on their advisers' fiduciary acknowledgement to assert their rights.

Non-Fiduciary Activities

At least two areas that will not make an adviser a fiduciary are:

- Providing general investment education.
- Simple "order-taking." If a broker is simply in the role of executing an order to buy or sell without providing any recommendation, that transaction does not constitute investment advice.

Effective Date

The new fiduciary requirement status of advisers becomes effective in April 2017, however, the full disclosure provisions, the policies and procedures requirements, and the contract requirement do not go into full effect until January 1, 2018.

Beltz Ianni & Associates has always been committed to providing high-quality advice that always puts our client's best interest first. We strive to help families achieve retirement security, and we want a system that provides a level playing field for those who provide unbiased, quality advice. This final rule helps align all advisers' interests with those of their clients.

*See the Department of Labor for details. www.dol.gov/ProtectYourSavings/FactSheet.htm and www.dol.gov/protectyoursavings/faqs.htm
