
FAQs (and Answers) from DOL

By Editorial Staff Fri, Oct 28, 2016

The DOL said 'No' to the question: Can advisors rely on the 'streamlined' version of the Best Interest Contract Exemption if the products they recommend to IRA owners generate the same level of revenue-sharing from product manufacturers?

The first tranche of answers to “[FAQs](#)” about the exemptions from the Department of Labor’s “conflict of interest” rule, issued last April, was released by the DOL yesterday. It was much anticipated by executives and attorneys at brokerage firms, life insurance companies and online providers of “robo” advice.

Several questions sought clarification of the “streamlined” version of the Best Interest Contract Exemption, which “enables advisers and firms that receive only a ‘level fee’”—i.e., advisers who charge a fixed percentage of assets instead of commissions—to avoid some of the red tape and legal liability associated with signing a formal pledge to act in their clients’ best interest.

On questions asking if the advisors whose sales generated level commissions or level third-party payments could use the streamlined BIC, the DOL said no.

Regarding advisors who sign the pledge in order to accept commissions without violating the new rule, the DOL was also asked if brokerages could still use the “grid,” a compensation format that defines incentives such as bonuses for meeting production goals, and under which the percentage commissions paid to advisors may rise based on escalating sales thresholds.

The DOL said yes, but set strict limits on incentives or compensation that, by varying, might create conflicts of interest with the client—such as payments to advisors of retroactive bonuses for meeting sales volume thresholds or fixed percentages of the varying compensation that brokerages receive from mutual fund companies or insurance companies.

“If, for example, different mutual fund complexes pay different commission rates to the firm, the grid cannot pass along this conflict of interest to advisers by paying the adviser more for the higher commission funds and less for the lower commission funds (e.g., by giving the adviser a set percentage of the commission generated for the firm),” the DOL said in its answer to Question 9.

Annuities were a focus of FAQs 21, 22 and 23. The DOL re-emphasized that insurance agents must use the more rigorous Best Interest Contract Exemption if they want to sell fixed indexed annuities to IRA clients, and that insurance companies, or insurance marketing organizations that are financial institutions or act for insurance companies, must monitor their conduct for violations of the clients' best interests.

The FAQs offered some good news about rollover recommendations, said Seth Rosenbloom, associate general counsel for Betterment for Business, a low-cost, web-mediated 401(k) service that includes personalized investment advice for plan participants, including rollover advice.

Rosenbloom told *RIJ* that the answer to Question 14 explained how a rollover recommendation could proceed under the streamlined BIC even "if, despite prudent efforts, the financial institution is unable to obtain the necessary information or if the investor is unwilling to provide the [fee] information" proving that the rollover is in the client's best interest.