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## Fred Reish et al comment on DOL proposal's impact

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By Editorial Staff    Thu, Jul 23, 2015

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*Attorneys at the Drinker Biddle law firm note that, under the proposal, commissioned sales of variable annuities to IRA owners would be held to a higher standard of conduct than sales of fixed annuities to IRA owners.*

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If enacted in its current form, the Department of Labor's fiduciary (or "conflict-of-interest") proposal would have "a significant impact on the sales practices of insurance agents and brokers, according to a new [report](#) from attorney Fred Reish and colleagues at the law firm of Drinker Biddle.

Under the current language of the proposal, insurance advisors would have to comply with the existing exemption (PTE 84-24) in order to be earn manufacturer-paid commissions on sales of fixed annuities to IRA owners and 401(k) plan participants, but must meet a new "best interest" or "BICE" standard on sales of variable annuities to IRA owners.

Sales of variable annuities, which are securities and insurance products, are regulated by the SEC and FINRA. Sales of fixed annuities—fixed deferred, fixed income, and fixed indexed annuities—are regulated by the states as insurance products.

One insurance company executive speculated at the recent IRI regulatory conference that, if the fiduciary bar is set higher for variable annuities, fixed annuities would have an advantage in the IRA market.

That could have a big impact on annuity sales. Recent estimates show that the amount of savings in IRAs, including traditional and rollover IRAs, now exceeds \$7 trillion. Sales to IRA owners currently account for a large share—nearly half for some products—of overall annuity sales.

There's some overlap between the BICE and PTE 84-24 standards, and some important differences. Under both standards, advisors have to act in the best interest of the client when selling to IRA owners. But the BICE rule requires advisors and clients to enter into a contract in which the advisors pledge to make their sales recommendations "without regard" to their own remuneration.

The phrase "without regard" is receiving particular scrutiny by critics of the proposal. In its [public comment](#) on the DOL proposal, the Insured Retirement Institute, which advocates for the interests of the annuity industry, said "the definition of the term "Best Interest" in

the Proposed Amendment to PTE 84-24... should be revised to make clear that advisers and financial institutions must always put their clients' interests first, but would not be required to completely disregard their own legitimate business interests."

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