



Memphis NSCP Compliance Roundtable

The DOL's New Fiduciary Rule

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Topics:



- **Background**
 - ERISA Fiduciary Status and its Significance
 - DOL’s Old Rule for Determining “Investment Advice Fiduciary” Status
- **DOL’s New Rule – Final Fiduciary Rule**
- **Impact**
- **Prohibited Transaction Class Exemptions (PTEs)**
 - Best Interest Contract Exemption (BIC Exemption)
 - Principal Transactions Exemption (PT Exemption)
 - Amendments to Current PTEs



Background:

- ERISA Fiduciary Status | Significance
- DOL's Old Rule | Five-Part Test

Background: ERISA Fiduciary Status | Significance



- **ERISA provides a comprehensive federal scheme for the regulation of employee pension and welfare benefit plans offered by employers**
 - Provisions intended to protect rights of plan participants and beneficiaries in employee benefit plans
 - Protections include requirements relating to reporting and disclosure, participation, vesting, and benefit accrual, as well as plan funding and plan management.

Background:

ERISA Fiduciary Status | Significance (continued)



- **ERISA provides a comprehensive federal scheme for the regulation of employee pension and welfare benefit plans offered by employers**
 - ERISA provides standards-based form for regulating plan management, the centerpiece of which is the plan “fiduciary”
 - Plan fiduciaries may include plan trustees, plan administrators, and a plan’s investment managers or advisors. Fiduciary status may also extend to other service providers as a result of their recommendations or advice even though they may not be named as a fiduciary in the plan document

Background:

ERISA Fiduciary Status | Significance (continued)



Fiduciary status has three important implications:

- **First**, ERISA fiduciaries have highest duty under the law: duty of loyalty; duty of prudence; duty to diversify; duty to act in accordance with plan documents
- **Second**, ERISA specifies certain “prohibited transactions” in which fiduciaries cannot engage without penalty. Similar rules apply to IRAs under Internal Revenue Code (Code)
- **Third**, ERISA fiduciaries who breach their duties are subject to personal liability for resulting losses. A fiduciary who engages in a prohibited transaction (without complying with an applicable PTE) will be subject to excise taxes/penalties

Background:

ERISA Fiduciary Status | Significance (continued)



The statutory definition of a “fiduciary” under ERISA and the Code includes any person who:

- (i) exercises any discretionary authority or control with respect to the management of the plan or exercises any authority with respect to the management or disposition of plan assets;
 - (ii) renders *investment advice* for a fee or other compensation with respect to any plan asset or has authority/responsibility to do so; or
 - (iii) has any discretionary responsibility in administration of the plan
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- Under second prong of this definition, a person who renders investment advice for a fee or other compensation is often referred to as an “*investment advice fiduciary*”

Background:

DOL's Old Rule | Five-Part Test (continued)



- Since 1975, the DOL has applied a five-part test for determining when a person is an investment advice fiduciary. Under this test, a person is an investment advice fiduciary if the person renders advice to a plan that:
 1. is a recommendation on investing in, purchasing, or selling securities or other property, or advice as to their value;
 2. is provided on a **regular basis**;
 3. is provided pursuant to a **mutual** agreement, arrangement, or understanding, either written or otherwise;
 4. will serve as a **primary basis** for investment decisions; and
 5. is on an individualized basis.

Background:

DOL's Old Rule | Five-Part Test **(continued)**



- **Five-factor test significantly narrowed the scope of advisers who were considered fiduciaries under ERISA and the Code.**
 - Individuals or entities who gave one-time advice to an ERISA plan/IRA owner were not deemed investment advice fiduciaries because the advice was not provided on **regular basis**.
 - Individuals or entities whose advice was not a primary basis for an investment decision were not investment advice fiduciaries. In order for advice to be subject to fiduciary standard, the advice had to be used as **primary basis** for investment decision.
 - IRA rollover recommendations (whether, in what amount, in what form, and to what destination a rollover should be made) exempted from coverage under old rules.

Background:

DOL's Old Rule | Five-Part Test (continued)



- In April 2015, the DOL issued a proposed rule that introduced a new approach (in place of the five-factor test) for determining whether an individual or entity is an “investment advice fiduciary” for purposes of ERISA and the Code (the “Proposed Rule”).
- The publication of the Proposed Rule was followed by a notice and comment period, which resulted in over 3,000 comment letters and a public hearing at which more than 75 speakers testified.
- On April 6, 2016, the DOL issued its final version of regulations (Final Fiduciary Rule), which replaces the five-part test and redefines who is a “fiduciary” under ERISA and the Code. The Final Fiduciary Rule also creates new, and amends certain existing, prohibited transaction exemptions.



The Department of Labor's Final Fiduciary Rule

Final Fiduciary Rule:



- Eliminates the DOL's five-part test
- Implements new approach for determining whether an individual or entity is an “investment advice fiduciary”
- Investment professionals servicing retirement investors through brokerage accounts will be subject to fiduciary standard for first time, which absent compliance with a PTE, will prohibit them from receiving fees and commissions they historically have received in connection with recommending certain investments
- More extensive prohibited transactions will also impact investment advisory relationships
- Documentation and compliance procedures for affected relationships under either regime will need to be addressed
- April 10, 2017 | January 1, 2018

Final Fiduciary Rule:



Final Rule defines the types of advice and relationships that will cause a person to be considered a fiduciary under ERISA and the Code

Considerations include:

- Whether the communication constitutes a recommendation as to one of the categories of covered investment advice
- Whether the advice is provided in exchange for a fee or other compensation
- Whether the person providing the advice falls within one of three status categories
- Whether an exception/exclusion applies

Final Fiduciary Rule: Categories of Investment Advice



- **First, in order to be considered an investment advice fiduciary, the person must provide advice to a plan, plan fiduciary, plan participant or beneficiary, IRA or IRA owner that includes a “**recommendation**” as to any of the following:**
 - Whether to buy, sell, hold, or exchange securities or other investment property
 - How securities or other investment property should be invested after being rolled over, transferred or distributed from the plan or IRA
 - The management of securities or other investment property, including, among other things, recommendations on investment policies or strategies, portfolio composition, selection of other persons to provide investment advice or investment management services and selection of investment account arrangements (e.g., brokerage versus advisory)
 - Rollovers, transfers or distributions from a plan or IRA, including whether, in what amount, in what form, and to what destination such a rollover, transfer or distribution should be made

Final Fiduciary Rule: Fee or Other Compensation



- **Second, in order to be considered an investment advice fiduciary, the person must provide advice to a plan, plan fiduciary, plan participant or beneficiary, IRA or IRA owner in exchange for a fee or other compensation, direct or indirect, in connection with such **recommendation**. The term “fee or other compensation, direct or indirect” is extremely broad and includes:**
 - Any explicit fee or compensation for the advice received by the person (or by an affiliate) from any source
 - Any other fee or compensation received from any source in connection with or as a result of the purchase or sale of a security or the provision of investment advice services, including, though not limited to, commissions, loads, finder’s fees, revenue sharing payments, shareholder servicing fees, marketing or distribution fees, underwriting compensation, payments to brokerage firms in return for shelf space, recruitment compensation paid in connection with transfers of accounts to a registered representative’s new broker-dealer firm, gifts and gratuities, and expense reimbursements

Final Fiduciary Rule: Status of Person Providing Recommendation



- Third, the **recommendation** must be provided either directly or indirectly (e.g., through or together with any affiliate) by a person who:
 - Represents or acknowledges that the person is acting as a fiduciary
 - Renders the advice pursuant to a written or verbal understanding that the advice is based on the particular investment needs of the recipient
 - Directs the advice to a specific recipient or recipients regarding the advisability of a particular investment or management decision with respect to securities or other investment property of the plan or IRA
- **Note:**
 - No “**regular basis**” requirement – single recommendation will suffice
 - No mutual understanding or “**primary basis**” requirement as to the extent of the recipient’s reliance on the advice

Final Fiduciary Rule: What Constitutes a Recommendation



- **Definition of a “Recommendation”:**
 - “Recommendation” means a communication that would reasonably be viewed as a suggestion that the advice recipient engage in or refrain from taking a particular course of action, based on the communication’s:
 - Content,
 - Context, and
 - Presentation.

- **Factors to Consider:**
 - This is an objective inquiry
 - The more individually tailored the communication is to a specific advice recipient, the more likely it would be viewed as a recommendation
 - A series of actions may constitute a recommendation in the aggregate even if they would not when viewed individually
 - Does not matter if the communication was initiated by a person or computer software program

Final Fiduciary Rule: What Constitutes a Recommendation (continued)



- **Non-Recommendations:**

- The following categories of communications are not considered to be a “recommendation,” and therefore they do **not** constitute investment advice:

- (1) Platform Providers; Selection and Monitoring Assistance**

A person who markets to an independent plan fiduciary a platform for making and monitoring plan investments is not making a recommendation, as long as the marketing is done without regard to the individualized needs of the plan.

- The person must disclose in writing to the plan fiduciary that the person is not undertaking to provide impartial investment advice or advice in a fiduciary capacity
- If identifying investment alternatives that meet objective criteria by plan fiduciary, the person must disclose in writing any financial interest in any of the investment alternatives

Final Fiduciary Rule: What Constitutes a Recommendation (continued)



- **Non-Recommendations:**

- The following categories of communications are not considered to be a “recommendation,” and therefore they do **not** constitute investment advice:

(2) General Communications

Furnishing or making available general communications that a *reasonable person would not view as an investment recommendation*, including:

- General circulation newsletters;
- Commentary in public broadcast talk shows;
- Remarks/presentations in widely attended speeches & conferences;
- Research or news reports prepared for general distribution;
- General marketing materials;
- General market data, including data on market performance, market indices, or trading volumes;
- Price quotes;
- Performance reports; or
- Prospectuses

Final Fiduciary Rule: What Constitutes a Recommendation (continued)



(3) Investment Education

Plan Information:

- The terms or operation of plan, benefits of participation, effect of pre-retirement withdrawals, forms of distributions, fee/expense information, etc.

General Financial, Investment, and Retirement Information:

- General concepts, historic rates of return for asset classes, effects of fees on rate of return, effects of inflation, retirement income estimates, risk tolerance
- No discussion of specific investments or distribution options

Asset Allocation Models:

- Based on generally accepted investment theory & historic asset class returns
- Statement to consider other assets, income, and investments outside the model

Interactive Materials:

- Questionnaires, worksheets, etc. for retirement income need estimates that use generally accepted theories and objective correlation between assets and income
- Material facts and assumptions disclosed and accompany the materials

Final Fiduciary Rule: Does an Exception Apply



- The following activities and communications are exempt under the rule, and therefore they do **not** constitute investment advice:

1. Sophisticated Counterparty Exception

- Applies to advice provided to banks, insurance carriers, registered investment advisers, broker-dealers, and any plan fiduciary independent of the seller with at least \$50 million in total assets under management
- Seller must know or reasonably believe that the independent fiduciary is capable of evaluating investment risk and may rely on written representations
- Seller must also “fairly inform” the independent fiduciary:
 - That the seller is not undertaking to provide impartial investment advice;
 - The existence and nature of the seller’s financial interest in the transaction; and
 - That the seller is not giving advice in a fiduciary capacity
- The seller may not receive a fee from the plan, independent fiduciary, plan participant, beneficiary, IRA, or IRA holder for the provision of investment advice in the transaction
- The seller will generally need to meet these requirements prior to the transaction

Final Fiduciary Rule: Does an Exception Apply (continued)



The following activities and communications are exempt under the rule, and therefore they do **not** constitute investment advice:

2. Swaps Exception

- This exception allows swap dealers, security-based swap dealers, major swap participants, major security-based swap participants and swap clearing firms to provide advice to plans in connection with these types of swap transactions.
- The plan must be advised by an independent fiduciary, and the swap dealer, etc., may not receive a fee directly from the plan or plan fiduciary for providing advice (as opposed to other services) to the plan. (The independent fiduciary is not required to be an “independent fiduciary with financial expertise” as defined in the sophisticated counterparty exception.)
- The person providing the advice must obtain a written representation from the plan fiduciary confirming the person’s non-fiduciary status.

Final Fiduciary Rule: Does an Exception Apply (continued)



The following activities and communications are exempt under the rule, and therefore they do **not** constitute investment advice:

- 3. Certain Activities by Employees of the Plan Sponsor (Employer)**
 - Investment advice is exempted to the extent employees of the plan sponsor, acting in their capacity as employees, give advice to a plan fiduciary or to another employee or independent contractor of the plan sponsor
 - The employee must not receive not receive any fee or other compensation in connection with the investment advice
 - Other than their normal compensation for work performed for the employer
 - Advice given to a fellow employee in that employee's capacity as a plan participant or beneficiary is also exempted as long as:
 - The advice giver's job responsibilities do not involve giving investment advice; and
 - The advice giver is not otherwise registered under securities or insurance laws



Impact of Final Rule

Impact of Final Rule:



Final Rule will have a profound impact on:

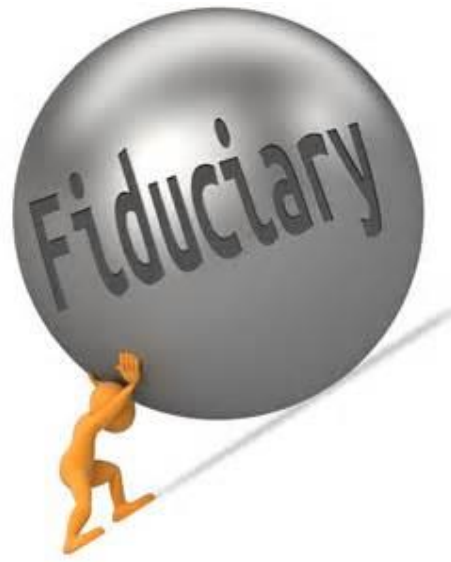
- **How services are provided to ERISA Plans and IRAs.**
 - Retail brokerage
 - Institutional brokerage
 - Investment education and communications
 - Recordkeeping and platform providers
- **How all types of investment products and services are sold to ERISA Plans and IRAs.**
 - Registered funds/ETFs
 - Private funds
 - Managed accounts
 - Consulting
 - Insurance products
 - Futures and options
 - Brokerage windows
 - Etc.
- **What disclosures are provided to small Plan fiduciaries, Plan participants and IRAs.**
 - The new PTEs will require extensive disclosure of investment-related compensation paid to financial institutions and their individual representatives.



Prohibited Transaction Class Exemptions



***NSCP Compliance Roundtable
Fiduciary Investment Advice***



Wednesday, May 18, 2016

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Fiduciaries and Compensation

- **Fundamental Restrictions:**
 - Prohibited from dealing with the income or assets of a plan or IRA in the fiduciary's own interest
 - Duty not to act on conflicts of interest that may affect fiduciary's best judgment on behalf of the plan or IRA
- **Impact on Compensation:**
 - Can't receive additional fees that affect best judgment
 - Can't receive third party payments for transactions
 - Can't engage in principal transactions



Fiduciaries and Compensation

- **Permissible Compensation without an Exemption**
 - Compensation that is fair and reasonable
 - Compensation that does not vary based upon investment advice
- **Impermissible Compensation unless qualify for an Exemption**
 - Commissions
 - Sales Loads
 - 12b-1 Fees
 - Revenue Sharing
 - Referral Fees
 - Gifts and Expense Reimbursements
- **A principal transaction is always prohibited unless qualify for exemption**



Level Fee Fiduciaries

- **Generally, fiduciaries whose only compensation is receipt of a percentage of assets under management (“Level Fee Fiduciaries”) are not engaging in prohibited transactions because no conflict of interest**
- **Exception when a fiduciary makes a recommendation to roll over a Plan’s assets into an IRA;**
- **To qualify for Best Interest Contract exemption, must**
 - provide written statement prior to transaction of the Financial Institution’s and Adviser’s fiduciary status;
 - comply with the Impartial Conduct Standards; and
 - in case of a recommendation to roll over to an IRA, document the specific reason why the roll over is considered in the best interest of the retirement investor and abide by the other provisions of the Best Interest Contract Exemption applicable to Level Fee Fiduciaries



Prohibited Transaction Exemptions (PTEs)

- **Best Interest Contract Exemption (BIC)**
 - Allows otherwise prohibited forms of compensation to be received by “Advisers” and “Financial Institutions” and their “Affiliates” and “Related Entities” for providing “Investment Advice” to a “Retirement Investor”
- **Principal Exemption**
 - Allows a fiduciary to receive compensation in connection with a purchase or sale of certain types of securities between a fiduciary and a “Retirement Investor”
- **Not required to abide by exemptions if**
 - Not a fiduciary
 - Don’t receive prohibited compensation or engage in prohibited transaction

Advisers, Financial Institutions, Affiliates and Related Entities



- **Adviser** – an individual who is (1) an investment advice fiduciary, (2) an employee, independent contractor, agent or registered representative of a Financial Institution, and (3) satisfies insurance and securities licensing requirements
- **Financial Institution** – an entity that employs the Adviser and (for purposes of the Principal Exemption, purchases and sells Principal Traded Assets for its own account in the ordinary course of business) and is either (1) RIA, (2) bank, (3) broker-dealer, or (BIC Exemption only, an insurance company)
- **Affiliates** – basic “control” analysis – same as under existing laws
- **Related Entity** – any entity other than an affiliate in which the Adviser or Financial Institution has an interest which may affect best judgment



Retirement Investors

- **Under BIC Exemption and Principal Exemption:**
 - participant or beneficiary of a Plan with authority to direct the investment of assets or take a distribution;
 - beneficial owner of an IRA; or...
- **Under Principal Exemption:** a fiduciary of a non-participant directed Plan with authority to make investment decisions
- **Under BIC Exemption**
 - a Retail Fiduciary – a fiduciary of a Plan or IRA other than (i) a bank, (ii) insurance carrier, (iii) RIA, (iv) Broker-Dealer or (v) an independent fiduciary that holds at least \$50 million assets



Best Interest Standard

Advice reflects the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliates, Related Party, or other party



Scope of BIC Exemption

- **Advisers, Financial Institutions, Affiliates and Related Entities can receive compensation as a result of providing investment advice to a Retirement Investor**
- **Exemption does not apply for:**
 - In-house plans;
 - Compensation received from a Principal Transaction (note that this exclusion doesn't cover Riskless Principal Transactions);
 - Robo-advice; or
 - If Adviser has or exercises any discretionary authority with respect to the recommended transaction



Scope of Principal Exemption

- **Adviser or Financial Institution may purchase or sell a “Principal Traded Asset” in a Principal Transaction or Riskless Principal Transaction with a Plan, participant or beneficiary account, or IRA, and receive a mark-up, mark-down or other similar payment**
- **“Principal Traded Asset”**
 - Debt Security
 - registered corporate security (U.S. only);
 - agency debt;
 - asset-backed agency/GSE debt; and
 - U.S. treasuries
 - CDs
 - UITs
 - Individual exemptions



Principal Exemption Transaction Conditions

- **Debt Securities can't be issued by the Financial Institution or any Affiliate**
- **Financial Institution can't be underwriter or part of syndicate in distribution of Debt Securities**
- **Adviser must determine the Debt Security possesses no greater than a moderate credit risk and sufficiently liquid that it could be sold at or near carrying value within a reasonably short period of time**
- **Purchase or sale of the Principal Traded Asset is for cash**

Written Contract Requirement (BIC and Principal Exemptions)



- **Written contract for IRAs and Plans not covered by Title I of ERISA**
 - may be a master contract covering multiple recommendations
 - must cover advice entered into prior to the contract date in order for exemption to apply to such advice
 - must be executed prior to or at the time as the execution of the recommended transaction
 - can be a stand alone contract or in a separate section of another contract
 - for contracts entered into prior to 1/1/18, can amend to comply with these requirements through “negative consent” process completed prior to 1/1/18, but can’t piggyback changes or new terms
 - must include a notice that the Financial Institution maintains an electronic copy of the contract on its website
- **Written contract not required for ERISA Plans or Level Fee Fiduciaries**

Fiduciary Status Acknowledgement (BIC and Principal Exemptions)



- **All Financial Institutions (including Level Fee Fiduciaries and advice for Plans subject to ERISA) must affirmatively state in writing that it and its Advisers act as fiduciaries**

Impartial Conduct Standards (BIC and Principal Exemptions)



- **Contract for IRAs and Plans not subject to ERISA must disclose that**
 - Advice is provided in the Retirement Investor’s Best Interest;
 - Statements won’t be materially misleading when made; and
 - If relying on BIC Exemption, must state that the recommended transactions won’t cause the fiduciary to receive compensation in excess of reasonable compensation
 - If relying on Principal Exemption, must state that the fiduciary will seek best execution reasonably available for the transaction
- **Advice for Plans subject to ERISA and Level Fee Fiduciaries not required to put the foregoing in a written contract, but must abide by these standards**

Warranties (BIC and Principal Exemptions)



- **Fiduciaries for IRAs and all Plans (except for Level Fee Fiduciaries) must make the following representations in writing at or prior to the time of the transaction:**
 - Financial Institution has adopted and will comply with policies and procedures to adhere to the Impartial Conduct Standards
 - In formulating policies and procedures, the Financial Institution has identified and documented its Material Conflicts of Interest, adopted measures to address Material Conflicts of Interest and designated the identified person for addressing conflicts and monitoring adherence to Impartial Conduct Standards
 - Financial Institution’s policies require that neither the Financial Institution, Affiliates or Related Entities rely on differential compensation or other incentives to make recommendations not in the Best Interest of the Retirement Investor



Transaction Disclosures for BIC Exemption

- **Fiduciaries for IRAs and all Plans (except for Level Fee Fiduciaries) must make the following disclosures at or prior to the transaction (can be in the contract described above or separate document)**
 - States the Best Interest Standard of Care, describes the services provided, describes how the Retirement Investor will pay for the services, directly or through payment by a Third Party
 - Describes Material Conflicts of Interest, discloses fees and charges, and types of compensation to be received from third parties
 - Discloses that the Investor has the right to obtain copies of a written description of policies and procedures and more specific disclosures regarding costs, fees, and compensation
 - Provides a link to the Financial Institution's website and informs Investor that model contract disclosures and a written description of policies and procedures are available and updated at least quarterly

Transaction Disclosures for BIC Exemption (Continued)



- Discloses whether the Financial Institution offers Proprietary Products or receives Third Party Payments and if limit recommendations to Proprietary Products or investments that generate Third Party Payments, must notify of limits placed on investment universe that Adviser may offer
- Provides contact information (telephone and email) for a representative and a statement that can research information about the Financial Institution and Advisers through FINRA and IARD
- Discloses whether investments will be monitored
- If errors made in disclosures, exemption not voided so long as errors are fixed within 30 days of discovery



Web Disclosure for BIC Exemption

- **Must maintain a website updated at least quarterly**
- **Disclose business model and Material Conflicts of Interest**
- **Schedule of typical account fees and charges**
- **Model contract**
- **Written description of policies and procedures**
- **List of parties that provide Third Party Payments**
- **Disclosure of compensation and incentive arrangements with Advisers**
- **Can link to other public disclosures**
- **Errors must be corrected within seven days of discovery**

Proprietary Products and Third Party Payments (BIC Exemption)



- **Financial Institutions that restrict Advisers' investment recommendations to Proprietary Products or investments that generate Third Party Payments must meet additional conditions**
 - Additional disclosures regarding other options and Material Conflicts of Interest
 - Documentation of limits on the universe of recommended investments
 - Amount of compensation must be reasonable
 - Recommendation meets fiduciary standard

Transaction Disclosures for Principal Exemption



- Discloses the circumstances under which the fiduciary may engage in Principal Transactions, the type of compensation that will be received, including any Third Party compensation, and identifies and discloses Material Conflicts of Interest
- Except for existing contracts, documents a Retirement Investor's affirmative written consent on a prospective basis to a Principal Transaction
- Informs the Retirement Investor that consent is terminable by will, the Retirement Investor has the right to obtain a description of policies and procedures and specific information regarding the principal transaction, and that model contract disclosures and written descriptions of policies are on the Financial Institution's website
- Discloses whether the Adviser and Financial Institution will monitor the investment

Additional Transaction Disclosures (Principal Exemption)



- **Prior to execution of transaction, must orally or in writing inform of capacity in which the Financial Institution may act**
- **Confirmation that meets requirements of Rule 10b-10 of Exchange Act**
- **Annual Disclosure**
 - List each principal transaction
 - Disclose that consent is terminable by will, the right to obtain more detailed information, model contract disclosure is maintained on the Financial Institution's website, and description of policies and procedures is maintained on the website
- **Must maintain description of policies and procedures on website and provide to Retirement Investors free of charge and to the DOL upon request**

Ineligible Contract Provisions (applies to both exemptions)



- **No limitations on liability for a violation of contract terms (or violations of ERISA)**
- **No waiver of right to bring class action in court**
- **No liquidated damages**
- **Can waive punitive damages or rescission rights (unless prohibited by other laws)**
- **No arbitration or venues in a distant location or that other limits to the right of Retirement Investors to assert claims**
- **These limitations don't apply to Level Fee Fiduciaries**



Department Disclosure and Recordkeeping

- **To rely upon BIC Exemption, must provide notice to the Department via email**
- **Must maintain records to evidence compliance with Exemptions for at least six years**
- **Information is available for inspection by DOL, IRS, Retirement Investor and related fiduciaries**



Grandfathered Transactions

- **Applicability Date: April 10, 2017**
- **Under BIC Exemption, for any contracts entered into prior to the Applicability Date that are not expired or up for renewal, can continue to receive “prohibited compensation” so long as**
 - not an otherwise prohibited transaction
 - compensation is not received due to new contributions of funds by the Retirement Investor
 - compensation is reasonable
 - any recommendations made after the Applicability Date meet the Best Interest standard



Transition Period – BIC Exemption

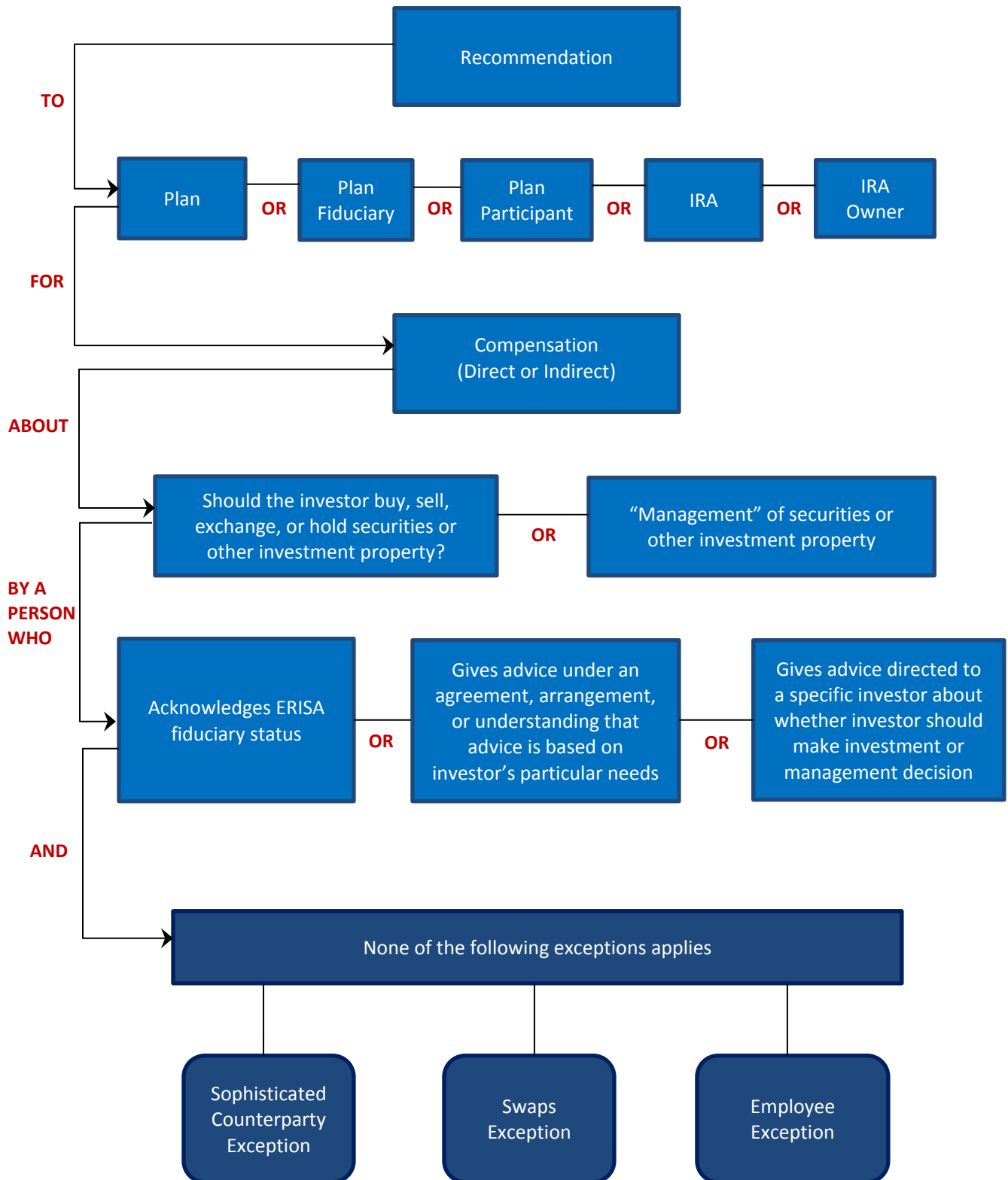
- **Transition Period from April 10, 2017 – January 1, 2018**
- **During Transition Period, can receive compensation under the BIC Exemption under the following conditions:**
 - excludes ERISA Plans, in-house plans, Principal Transactions, Robo-Advice, and discretionary advice;
 - comply with the Best Interest standard
 - compensation is reasonable
 - no misleading statements
 - disclose that Financial Institution and Advisers are fiduciaries, the Best Interest standard, Material Conflicts of Interest, and Proprietary Products and Third Party Payments
 - designates a person responsible for addressing conflicts and monitoring adherence to conduct requirements



Transition Period – Principal Exemption

- **During Transition Period, can engage in Principal Transaction under the Principal Exemption under the following conditions:**
 - excludes ERISA Plans, in-house plans, and discretionary advice
 - comply with the Best Interest standard
 - seek to obtain best execution
 - no misleading statements
 - disclose that Financial Institution and Advisers are fiduciaries, the Best Interest standard, circumstances in which the Financial Institution may engage in Principal Transactions, and Material Conflicts of Interest
 - designates a person responsible for addressing conflicts and monitoring adherence to conduct requirements

Investment Advice Fiduciary Status



Investment Advice Fiduciary Under DOL's Old Rule vs. New Rule

Investment Advice Fiduciary Status Old Rule	Investment Advice Fiduciary Status New Rule
<p>A person is an investment advice fiduciary if the person—in exchange for a direct or indirect fee or other compensation—renders advice to a plan that:</p>	<p>A person is an investment advice fiduciary if the person—in exchange for a direct or indirect fee or other compensation—provides one of the following types of recommendations to a plan, plan fiduciary, plan participant or beneficiary, IRA or IRA owner:</p>
<ul style="list-style-type: none"> (i) is a recommendation on investing in, purchasing, or selling securities or other property, or is advice as to their value; (ii) is provided on a <i>regular basis</i>; (iii) is provided pursuant to a <i>mutual</i> agreement, arrangement, or understanding, either written or otherwise; (iv) that the advice will serve as a <i>primary basis</i> for investment decisions with respect to the plan assets; and (v) is individualized to the plan based on the particular needs of the plan. 	<ul style="list-style-type: none"> (i) A <i>recommendation</i> as to the advisability of buying, holding, selling, or exchanging securities or other investment property, or a <i>recommendation</i> as to how securities or other investment property should be invested after the securities or other investment property are rolled over, transferred, or distributed from the plan or IRA; OR (ii) A <i>recommendation</i> as to the management of securities or other investment property, including, among other things, recommendations on investment policies or strategies, portfolio composition, selection of other persons to provide investment advice or investment management services, selection of investment account arrangements (<i>e.g.</i>, brokerage versus advisory); or a <i>recommendation</i> with respect to rollovers, transfers, or distributions from a plan or IRA.
	<p><u>AND</u></p> <p>Does one of the following, either directly or indirectly (<i>e.g.</i>, through or together with any affiliate):</p>
	<ul style="list-style-type: none"> (i) Represents or acknowledges that it is acting as a fiduciary; OR (ii) Renders advice pursuant to a written or verbal agreement, arrangement, or understanding that the advice is based on the particular investment needs of the advice recipient; OR (iii) Directs the advice to a specific recipient regarding the advisability of a particular investment or management decision with respect to securities or other property of the plan or IRA.

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