



©2014 ASHHRA

A Plan Sponsor Perspective: *The DOL Fiduciary Rule and Related Guidance*

RICHARD A. TURNER – VP and Associate General Counsel, AIG

What we are going to cover:

■ Basics:

- When was the guidance published?
- When does it become effective?
- What is included?
- Is there grandfathering?
- Are there core concepts?

■ Scope:

- Which plans and arrangements are covered?
- Which recommendations are covered?
- What did (and didn't) change?
- How will this impact plan sponsors/fiduciaries?
- How will this impact plan participants?
- Summing up
- Questions



Basics

- Final guidance officially published April 8, 2016
 - Released April 6, 2016
- Generally effective April 10, 2017
- Transition period: April 10, 2017 to January 1, 2018
 - Applies only to certain requirements under the Best Interest Contract Exemption (BICE)
- Elements of the final guidance: generally follow the proposal *in form*
 - The rule itself, which also includes
 - New exceptions (previously referenced as carve-outs)
 - Restatement and revisions to existing exception: education
 - A new exemption: BICE
 - Revisions to existing exemptions

Basics (cont'd)

- Core concepts in the guidance for making fiduciary recommendations: impartial conduct standards
 - Best interest
 - Reasonable compensation
 - Avoid misleading statements
- Grandfathering for existing accounts: different from typical concept of grandfathering
 - Actually a simplified exemption: recommendations still subject to fiduciary standard
 - Limited scope
 - Limited set of fiduciary requirements apply: impartial conduct standards, related disclosures to recommendations
 - “Grandfathering” forfeited by certain activities

Scope

- **Arrangements covered by this rule**
 - ERISA retirement plans
 - Non-ERISA self-employed (“Keogh”) plans
 - IRAs (including SEP and SIMPLE)
 - Welfare benefit plan products with investment element
- **Recommendations covered by this rule**
 - Of investments: buy, sell, hold
 - Of another (unaffiliated) investment adviser
 - Of distribution and/or rollover
- **Comparison to prior version of the rule**
 - Many of these same activities excluded unless under an agreed advisory relationship



What did (and didn't) change?

- **Some elements did not change from the original proposal:**
 - General structure – regulation, exceptions, new exemption, modification of existing exemptions
 - Broad scope (though somewhat narrowed or clarified)
 - Central focus on a new best interest standard for covered recommendations
- **Some elements did change:**
 - Implementation timetable
 - Clarification around scope for recommendations: generally, a “call to action”
 - Exceptions: renamed from “carve outs,” and modified
 - Additional clarity around a plan sponsor’s employees, and asset allocation models
 - Exemptions: one exemption narrowed (PTE 84-24), another broadened and made more workable
 - Broader scope for “grandfathering”

How will this affect plan sponsors?

■ Generally: two separate impacts

- *Many interactions between plan sponsors/fiduciaries and service providers will remain non-fiduciary. Example:*
 - Many responses to RFPs
 - Recordkeeping and education services
 - Platform offer: within scope of the new platform exception
 - Many current products will qualify as platforms
 - » Examples: mutual fund and group variable annuity platforms
 - Platforms can include: fixed and variable plan investments, designated investment for forfeitures or other unallocated amounts, self-directed brokerage windows, IRAs for automatic rollovers, QLACs, etc.
 - Can include assistance with investment identification and monitoring, *if the plan fiduciary selects the identification and monitoring criteria*
 - In certain cases, service provider offers of specific investment options need not be fiduciary
 - Ex: offers to fiduciaries with financial experience

How will this affect plan sponsors? (cont'd)

- **Generally, two separate impacts (cont'd):**
 - *Many service provider interactions with plan participants will now be fiduciary*
 - Recommendations (“calls to action”) that fall outside the scope of education
 - To buy, sell or hold plan investment
 - To select an unrelated investment adviser
 - Regarding distributions, rollovers
 - Key focus: best interest standard for covered recommendations
- **Some things to consider when selecting a service provider**
 - Recognizing that some of these services, where applicable, will be fiduciary
 - Identifying and agreeing on scope and limitations of fiduciary role
 - Duties regarding selection and monitoring of service providers still apply

How will this affect plan participants?

- As noted, many recommendations to plan participants will be fiduciary
 - Service providers already providing investment advisory services already agree to be a fiduciary. Ex: the VALIC Guided Portfolio Services® (GPS) program
 - Fiduciary status will expand to include
 - Certain elements of participant enrollment may be fiduciary
 - One-time or infrequent investment allocation recommendations
 - Recommendations of another investment adviser
 - Recommendations of distributions, rollovers

How will this affect plan participants? (cont'd)

- Additional fiduciary services will require additional disclosures to participants and may limit the services to be provided
 - Many recommendations subject to a “best interest” standard
 - Many cases will require a “best interest contract exemption” (BICE disclosure to a plan participant)
 - Some of the additional information may be similar to current fee disclosure information currently provided to plan sponsors and plan participants
 - Including publicly available websites, from VALIC Financial Advisors, Inc. (VFA) and other providers
 - BICE disclosures also will provide information regarding how the service provider selects and monitors products made available to plans and participants
 - Generally: the products/platforms are selected by the plan sponsor/fiduciary
 - Investment advice also can be provided under other DOL guidance, including Advisory Opinion 2001-09A (the basis for GPS), the PPA exemption, certain level fee programs, etc.

10

How will this affect plan participants? (cont'd)

- Key Topic: recommendations of distributions and rollovers
 - Education can apply to these same topics
 - What happens when those interactions fall outside of education, and into advice?
 - New fiduciary rule will apply
 - Example: a rollover recommendation will be subject to substantial additional important considerations, including:
 - What are the individual's alternatives to the rollover, including leaving money where it is?
 - What fees and expenses would be paid by participant in the plan and in the rollover alternative?
 - What services, service levels, and investments are available for the available alternatives?

Summing up

- You should expect to hear from your plan service providers before next April, as they
 - Review their services in light of the new rules
 - Make decisions and adapt to these new rules and requirements
- For larger plans, and possibly others as well, you may be asked to confirm information and acknowledge certain disclosures
- It is likely that your participants will hear from your service provider(s): including new BICE disclosures on or before April 10, 2017

Responding to your questions



Retirement accounts are intended to be long-term investments. Income taxes are payable upon withdrawal. Federal restrictions and a 10% federal early withdrawal penalty can apply to withdrawals prior to age 59½.

Neither VALIC nor its financial advisors or other representatives give legal or tax advice. Applicable laws and regulations are complex and subject to change. Any tax statements in this material are not intended to suggest the avoidance of U.S. federal, state or local tax penalties. For legal or tax advice concerning your situation, consult your attorney or professional tax advisor.

Securities and investment advisory services offered through VALIC Financial Advisors, Inc., member FINRA, SIPC and an SEC-registered investment advisor.

Annuities issued by The Variable Annuity Life Insurance Company. Variable annuities distributed by its affiliate, AIG Capital Services, Inc., member FINRA.

VALIC represents The Variable Annuity Life Insurance Company and its subsidiaries, VALIC Financial Advisors, Inc. and VALIC Retirement Services Company.

VALIC.com

Copyright © The Variable Annuity Life Insurance Company. All rights reserved.

VC 27612 (05/2016) J98980 ER





THE HUMAN SIDE OF HEALTHCARE

A personal membership group of the
American Hospital Association

©2016 ASHHRA