



Questions and Answers from The Big Idea Focus Group Webcast Series
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**Newly Proposed DOL Fiduciary Rule:
Moving to a Universal Fiduciary Standard**

Guest: Marcia S. Wagner, ESQ [The Wagner Law Group](#)

- Q I act as a 3(21) fiduciary to my plan clients. An exec leaves and wants to rollover assets to me. Can I accept that if I charge a flat fee on AUM? No variable compensation.**
- A The general understanding of practitioners is that under the current proposed rule, ANY rollover recommendation will be considered Investment Advice and conflicted, thus needing an exemption. This is regardless of the form of compensation (flat or variable). The DOL has been asked by numerous parties to create a new exemption that is not as onerous as the BIC if flat fees are involved.
- Q Timing: Marcia mentioned it will be effective by end of Obama's second term. But isn't it likely it may be effective by next summer, given the publication/comment/8-month effectiveness framework?**
- A Yes, the DOL may publish a final rule on a much faster schedule post hearings than previous regulations. If the proposed rule is kept, it will become effective after 8 months. The DOL has been asked to adjust the effective and/or enforcement date, so we will not have a certain answer until the final rule is published.
- Q Do you think there is room in the new proposed regulations for a two level approach to fees for services? For instance a base plan level fee for basic plan services paid for by all of the plan participants or the employer and a higher participant level fee for individual participants desiring a higher level of personalized investment advice that is only charged to participants electing the service?**
- A At a very general level without more details, the description of that arrangement does not sound like it would be considered Conflicted Advice under the proposed rule. Specifically, there is no variable compensation from the advice provided.
- Q Will indexed annuity commissions a life agent receives be considered variable comp requiring BIC exemption?**
- A These products will need to meet Prohibited Transaction Exemption 84-24 as proposed by the DOL and in whatever final form is published.



- Q How will this impact national banks with trust departments who would like to offer managed IRAs to participants in qualified plans where the bank serves as a discretionary trustee of the qualified plans? Will BIC contract be required if a participant in a qualified plan wants to establish a managed IRA with the national bank and roll over their account balance in the qualified plan to the IRA?**
- A It is our understanding of the proposed rule as currently drafted that all rollover advice will require the BIC exemption. It remains to be seen how the DOL will modify the BIC exemption as many people have called for changes.
- Q Who determines what "reasonable" compensation is?**
- A ERISA not the DOL have ever given a specific definition of reasonable compensation. Instead it is a facts and circumstances test to determine reasonableness.
- Q Under what authority does the DOL propose regulating advice to IRAs**
- A The DOL has taken the position that under previous guidance, they have the ability to publish tax code regulations in this area including for prohibited transactions.
- Q Does the Platform Carve out have any limitations or requirements relating to investment fund revenue?**
- A Under the proposed rule, there are no requirements relating to investment fund revenue, although there may be other rules and regulations that apply. Instead, if you meet the platform carve out, then you are not providing advice at all and thus are not a fiduciary.
- Q If we put this into simple English, do brokers now have to get any additional certificates to sell IRA or 401K group annuity plans?**
- A At this time, there are no certifications required but we have been assisting many of our clients in the process of implementing expanded fiduciary education programs.
- Q If the DOL has no authority over IRAs, what does a BD doing business with IRAs need exemption from?**
- A The IRS has authority over IRAs through the tax code and under previous guidance; the DOL takes the helm in publishing related regulations. Without a change to the statute, this is the DOL's only inroad to control IRAs.



- Q** What if we act as a Managed Trustee for both IRA clients and ERISA clients? We do not take variable fees. Are there going to be requirements for us?
- A** Without more details, it is difficult to answer this question. The key to needing an exemption under the proposed rule is to avoid conflicted advice. If you can determine that the situation described does not meet the definition of conflicted advice under the proposed rule, an exemption will not be needed.