

Publications

DOL Releases Guidance on Best Interest Contract and other Exemptions

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On October 27, 2016, the Department of Labor (“DOL”) issued a series of Frequently Asked Questions (“FAQs”) providing much needed guidance concerning the Fiduciary Rule and related prohibited transaction exemptions (“PTEs”), including the Best Interest Contract Exemption (“BIC Exemption”), PTE 84-24, and the Principal Transactions Exemption.

Although many of the FAQs merely restate positions DOL articulated in the preambles to the final exemptions issued in April 2016, the FAQs also provide important new clarifications of a number of core issues. Most notably, the FAQs –

- Address the adaptation of broker-dealer compensation grids and recruitment programs to the BIC Exemption conditions;
- Clarify the narrow scope of the BIC Exemption for “level fee” fiduciaries (“BIC Lite”) by reiterating that BIC Lite is not available where an Adviser receives third-party compensation or commission in connection with proprietary products; and
- Provide guidance on the application of the exemptions to insurance products, including a potential role for independent marketing organizations (“IMOs”) as part of a “segmented BIC” exemption strategy.

For purposes of summarizing the FAQ guidance, we have grouped our analysis by topic in the following order: (i) the BIC Exemption, (ii) BIC Lite, (iii) PTE 84-24, (iv) IMOs, and (v) other topics (e.g., the Principal Transactions Exemption). We also note that this initial set of FAQs does not address many critical and time sensitive interpretive questions related to the Fiduciary Rule itself. DOL has indicated that subsequent sets of FAQs will follow this initial release; FAQs still in progress at DOL may address some of those issues. DOL also noted (in FAQ 34) that it intends to focus its efforts on assisting with compliance, rather than citing violations and imposing penalties.

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