A closer look at BICE

The Department of Labor’s (DOL) new fiduciary rule updates the investment advice fiduciary definition. One way to comply with the rule is through the Best Interest Contract Exemption (BICE), which allows advisors to receive third party or variable compensation that would otherwise be conflicted. To comply with BICE, the conflicts of interest need to be disclosed and certain conditions met.

You are still a fiduciary when using BICE.

BICE can apply to all investments and annuity products, including variable annuities and fixed indexed annuities. It allows advisors to serve the best interest of their clients and receive reasonable third-party compensation.

Most BICE requirements are placed on the financial institution, such as a bank, insurance company or broker-dealer.

Financial institutions and advisors must satisfy these impartial conduct standards:

- An advisor must provide advice in the best interest of clients
- Statements cannot be misleading
- Compensation must be reasonable
BICE components

IRAs and annuities
The Best Interest contract, required for IRAs starting Jan 1, 2018, is between the financial institution and retirement investor. It outlines the fiduciary’s responsibilities to the client and must be signed by the investor. BICE is not available if the contract limits liability, waives or qualifies court actions (including class actions), and includes agreements to arbitrate or mediate individual claims in distant locations.

Small retirement plans
BICE applies to the small 401(k) plan sponsor market, which is generally <$50M in assets. No contract is required. The financial institutions need to:
- Acknowledge their fiduciary role
- Abide by impartial conduct standards
- Provide necessary disclosures

Level-fee fiduciaries
Fiduciaries who receive a set fee that does not vary regardless of the investment can use BICE for:
- Rollover transactions where the level fee changes from the plan to the rollover
- Transferring assets from one IRA to another, or one plan to another
- Changes in account types, such as brokerage to fee-based

Advisors should document reasons for the recommendation, why the recommendation is prudent and state that the recommendation is made without regard to the advisor’s or financial institution’s compensation.

For more resources to help you understand and apply the new fiduciary rule, visit nationwidefinancial.com/DOL.

The DOL fiduciary rule is complex and each firm may have a unique interpretation. Follow your financial institution’s guidelines to ensure compliance with the new regulations.