DOL Fiduciary Regulations

An Overview and Discussion of Issues Relating to Life Insurance

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Disclosure Slide

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Why did the DOL Issue New Fiduciary Regulations?

Reasons the DOL presented that the Regulations were necessary:

- IRA's and participant–directed plans such as 401(k)'s have replaced defined benefit plans overseen by sophisticated plan fiduciaries.
- The variety and complexity of financial products have increased widening the information gap between advisers and their clients.
- Plan fiduciaries, plan participants and IRA investors must often rely on experts for advice, but are unable to assess the quality of the expert's advice or effectively guard against the expert's conflicts of interest.

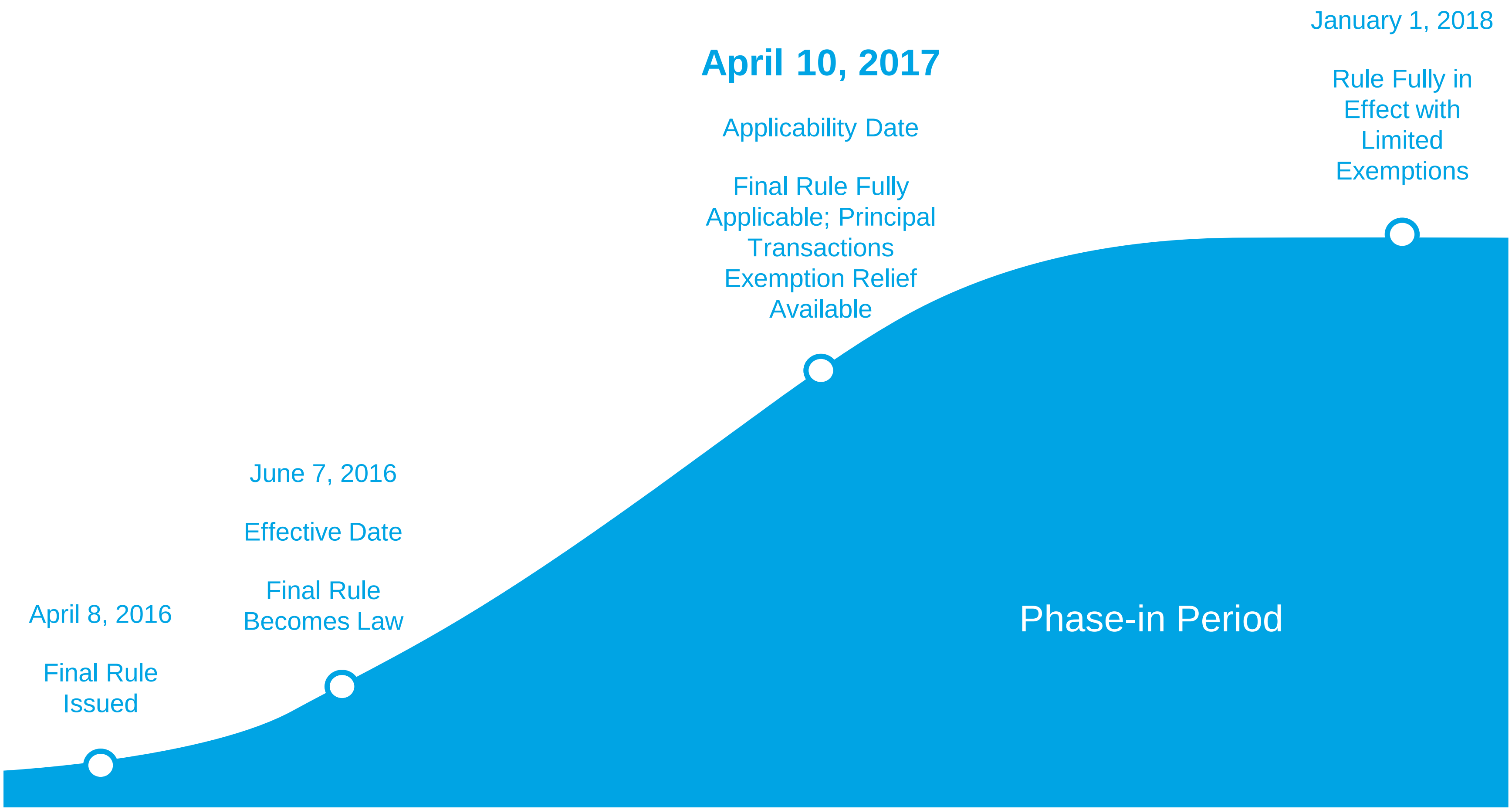
Problems the DOL presented that may arise within the current structure:

- Advisers can operate with undisclosed conflicts of interest.
- Advisers have limited liability for the harm created by their advice.
- Non-fiduciaries may:
  - Give imprudent and disloyal advice.
  - Steer customers to investments that benefit their own financial interests rather than their customer's.
  - Act on conflicts of interest in ways that would be prohibited if the advisor were a fiduciary.

Proposed Solution to these problems => DOL FIDUCIARY REGULATIONS

Timeline

Implementation of DOL Fiduciary Rule



New Definition of Fiduciary “3 x 3”

Person meets at least one in each category:

Service

For a direct or indirect fee (including through an affiliate), makes a recommendation regarding:

1. Acquiring, holding, disposing of or exchanging investment in a qualified plan or IRA
2. Management of investment in a qualified plan or IRA
3. How investment should be invested after rollover, transfer or distribution from a qualified plan/IRA

Status

1. State they are a fiduciary
2. Provides advice pursuant to written or verbal agreement, arrangement, or understanding that advice is based on the needs of the recipient, or
3. Directs advice to recipient regarding a particular management investment decision

What is Excluded from the New Definition?

Services NOT considered a "Recommendation":

- Platform Marketing
- Selection and Monitoring Assistance
- General Marketing Communications

Investment Education
(does not include specific investment recommendations)

- Plan Information
- General Investment Education
- Asset Allocation Models
- Interactive Investment Materials

Activities NOT considered to be "Investment Advice":

- "Seller" Transactions
- Swap Transactions
- Employee Communications

What is included as a “Qualified Plan” or IRA?

Covered	Not Covered **	May be Covered

▪ Qualified Plans under ERISA
  ▪ 401(k)
  ▪ Defined Benefit Plans
  ▪ Defined Contribution Plans
  ▪ Health Savings Accounts
  ▪ Education Savings Accounts
▪ IRAs
	▪ Nonqualified Deferred Compensation
	▪ Split $
	▪ Executive Bonus
	▪ Any non-ERISA plan
	▪ All other insurance sales
		▪ 403(b) Plans
		  ▪ Public (not covered because it is not subject to ERISA)
		  ▪ Private (covered)
		▪ Health & Welfare Plans
		  ▪ Individual and Group Term Life (not covered)
		  ▪ Insurance with investment components (covered)

** Unless funded with a distribution from a Qualified Plan/IRA

Strategy that Would Be Considered Investment Advice under the DOL Regulations

Selling Life Insurance in a Qualified Plan

Strategies that Could Be Considered Investment Advice under the DOL Regulations

Liquidate/Take a Distribution from your IRA and Invest in Life Insurance (includes RMDs**)

Pension Max**
Change IRA Survivor Annuity to Single Life and Invest Part of the Savings in Life Insurance

Change Beneficiary of IRA to Charity and Buy Life Insurance for Kids

Recommend an Investment Advisor for Qualified Plan/IRA and Receive a Referral Fee**

Others??

** Addressed in the 2016 AALU Conference.

ERISA and the Code Prohibit Fiduciaries from Self Dealing

- Receiving compensation that varies based on the advice given
  - Commissions
  - Awards

- Proprietary Products

- Receiving compensation from third parties
  - Non-proprietary Products/Third Party Payments

Two Exemptions from the DOL Fiduciary Rules

If you follow the exemptions, you may receive differential compensation.

Best Interest Contract Exemption (BICE)	Prohibited Transaction Exemption 84-24
▪ Covers all products ▪ Financial Institution must agree by contract to be subject to class action law suits ▪ Compliance requirements are much more involved ▪ Full exemption	▪ Only covers life insurance and fixed rate annuities ▪ Only provides relief for commission received ▪ Simpler, although not easy, to comply ▪ Exemption limited to the transaction

Life insurance agents and advisors are expected to rely on PTE 84-24 exemption for Life Insurance Sales

PTE 84-24 Requirements

Impartial Conduct Standards

- Must act in the best interest of the Plan or IRA
  - Agent must ignore his own interest.
- Statements made by the agent must not be materially misleading.
  - Must disclose material conflicts of interest.

Reasonable Compensation

- No clear definition of reasonable compensation
- Should be similar to others in the industry
- Commissions and employee benefits are permitted forms of compensation, but any other compensation such as awards, incentives, etc. are not permitted.

Disclosures

- Nature of affiliation with insurance company and restrictions on product choice
- Commissions must be disclosed on the product sale for all years, directly or indirectly including payments to third parties such as overrides or dealer concessions.
- All Charges, Fees Penalties, etc. relating to the policy.
- All disclosures must be approved in writing by customer.

Recordkeeping Requirements

- Financial Institution must retain records for 6 years.
- Reasonable Access to records by DOL, IRS & Investor.
- Documentation of Compliance with 84-24

Where Do We Go From Here?

Key Takeaways

We Have Time

- New definition takes effect April 10, 2017
- Challenges to new Regs – Law Suits, Congressional challenges, etc.
- Further clarification from DOL likely
- Industry is still reviewing Regulations

Monitor the Insurance Carriers

- Insurance Carriers will determine whether and in what circumstances they are willing to issue policies within qualified plans and utilizing distributions from qualified plans and IRAs.
- Keep a watchful eye on announcements from carriers on how they choose to do business in the future.
- Agents will choose among carriers based on new compliance and underwriting guidelines.

Stay Informed

- Watch for guidance issued by carriers
- Watch challenges to DOL's authority
- AIG Advanced Markets will keep you informed

Questions?