

**MEMO# 30553**

January 31, 2017

# **White Paper - Disclosure of Noncash Compensation and Third-Party Payments in Response to the DOL Fiduciary Rule**

[30553] January 31, 2017 TO: ICI Members

Bank, Trust and Retirement Advisory Committee

Broker/Dealer Advisory Committee

Chief Compliance Officer Committee

Operations Committee

Pension Committee

Pension Operations Advisory Committee

Sales and Marketing Committee

Small Funds Committee

Transfer Agent Advisory Committee SUBJECTS: Compliance

Disclosure

Distribution

Fees and Expenses

Operations

Recordkeeping

Transfer Agency RE: White Paper - Disclosure of Noncash Compensation and Third-Party Payments in Response to the DOL Fiduciary Rule

We are pleased to announce the publication of a new white paper, [\*Disclosure of Noncash Compensation and Third-Party Payments in Response to the DOL Fiduciary Rule\*](#).

On April 6, 2016, the Department of Labor (DOL) issued a final rule defining who is a “fiduciary” under Section 3(21) of the Employee Retirement Income Security Act of 1974 and Section 4975(e)(3) of the Internal Revenue Code as a result of giving investment advice to an employee benefit plan, plan fiduciary, plan participant or beneficiary, individual retirement account (IRA), or IRA owner. The final rule treats persons who provide investment advice or recommendations for a fee or other compensation with respect to assets of a plan or IRA as fiduciaries in a wider array of advice relationships.

Intermediaries operating as fiduciaries under the Best Interest Contract exemption (BICE)[\[1\]](#) are required to disclose all fees, compensation, and material conflicts of interest[\[2\]](#) to retirement investors. Use of the BICE requires certain disclosures to occur either before or concurrent with a recommended investment transaction, certain information to be provided upon request, and additional disclosures to be included on a

publicly available website that is reviewed and updated as needed each quarter. The transaction and website disclosure provisions have an applicability date of January 1, 2018.

An ICI working group of fund companies, intermediaries, and service providers drafted this paper to explore the disclosure of noncash compensation and third-party payments in response to the final rule. The paper identifies potential data sources intermediaries can use to help fulfill their disclosure requirements. It also highlights various types of information that fund companies and intermediaries may need to share to support disclosure.

The white paper can be obtained [here](#) and is published as part of the [ICI DOL Fiduciary Duty Rule Resource Center](#).

Questions or comments on the paper may be directed to the undersigned ([jeff.naylor@ici.org](mailto:jeff.naylor@ici.org); 202-326-5844).

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Director, Operations and Distribution

## [Attachment](#)

### **endnotes**

[1] 81 Fed. Reg. p. 21002 (April 8, 2016). Along with the final rule, the DOL issued a number of prohibited transaction exemptions, including the BICE. The Best Interest Contract is an agreement between the retirement investor and the financial institution that, if the specific terms outlined within the exemption are met (e.g., written acknowledgment of the adviser's and financial institution's fiduciary duty to the investor, disclosure of compensation and other fee information), allows "reasonable" compensation otherwise prohibited under the final rule to be paid.

[2] 81 Fed. Reg. p. 21084. A material conflict of interest exists when an adviser or financial institution has a financial interest that a reasonable person would conclude could affect the exercise of its best judgment as a fiduciary in rendering advice to a retirement investor.