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# DOL Prohibits Deferred Recruiting Bonuses Under New Rule

by Mason Braswell | Comments (10)

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Recruiting bonuses will face a major overhaul as a result of new guidance that the Department of Labor issued on its impending conflict-of-interest rule on Thursday.

In a long-anticipated list of 34 "[Frequently Asked Questions](#)," the DOL said upfront signing bonuses will be permitted as long as they are paid as a fixed sum and are tied to length of stay. However, payment contingent on meeting particular asset or sales targets —as most are today—can create "acute conflicts of interest" and will be impermissible, the DOL said in the 22-page update.

"[B]ack-end awards commonly result in large amounts of income to the adviser that are paid on an 'all or nothing' basis, contingent on the adviser's satisfaction of revenue or asset targets," the DOL wrote. "Such disproportional amounts of compensation significantly increase conflicts of interest for advisers making recommendations to investors, particularly as the adviser approaches the target."

The interpretation will dramatically change recruiting packages going forward, and could lead some firms to try to restructure existing deals, said Rogge Dunn, an employment lawyer with Clouse Dunn in Dallas.

"The old school model won't work," he wrote in an email. "There will be more scrutiny of [an] FA's book, as future bonuses can't be tied to production metrics."

Deferred contingent bonuses already in place will be permitted under grandfathering provisions once the rule becomes effective on April 10, 2017, but firms will have to subject brokers receiving them to higher levels of scrutiny.

"To the extent the financial institution chooses to honor these pre-existing arrangements, however, it must adopt special policies and procedures specifically aimed at the conflicts of interest introduced by the arrangements and designed to protect investors from harm," the FAQ says. "These policies and procedures should establish an especially strict system of supervision and monitoring of conflicts of interest, particularly as the adviser approaches sales targets."

The payments will be subject to the conflict-of-interest rule's Best Interest Contract Exemption, which permits customers to sue brokers who put their own interests ahead of their customers.

In another key interpretation, the Labor Department said brokerage firms can continue to compensate brokers with variable payouts based on production, but only if such variable grid structures "are not intended or reasonably expected to cause advisers to make recommendations that are not in the best interest of retirement investors and...do not cause advisers to violate the reasonable compensation standard."

Brokerage firms "must take special care in developing and monitoring compensation systems to ensure that they do not run counter to the fundamental obligation to provide advice that is in the customer's best interest," the DOL said.

As an example of conflict-tainted grid payouts, the DOL said that firms cannot give payouts for selling mutual funds that pay firms more for distribution than others.

"If, for example, different mutual fund complexes pay different commission rates to the firm, the grid cannot pass along this conflict of interest to advisers by paying the adviser more for the higher commission funds and less for the lower commission funds (e.g., by giving the adviser a set percentage of the commission generated for the firm)," the DOL said.