THE LIMITED FIDUCIARY

October 5, 2016

Introduction

Operators of phone centers and Websites anxiously await the implementation of the DoL Fiduciary Rule that will cause certain services and activities to become fiduciary acts. Changes in the definition of a fiduciary now encompasses some routine activities that are now classified as "advice", thus leading to the fiduciary status. Being classified as a fiduciary will compromise insurance protection and add potential risks unless an exemption is used.

Current use of the new exemption (Best Interest Contract –BICE) is far beyond the scope needed for non-fiduciary phone centers or Websites. Such use would be costly and impractical.

The alternative is the Limited Fiduciary, which maintains the current services and uses the full protection of the 408(g) exemption for limited services. The insurance coverage is unaffected or costs potentially lowered as are the business risks. The chance of an accidental breach is also greatly reduced. The Limited Fiduciary for existing services can be quickly implemented at a very low cost and minimum interruption or re-training.

What Is a Limited Fiduciary?

The DoL Fiduciary Rule defines six activities as advice that are prohibited when there is compensation involved, directly or indirectly. Two of these activities are routinely performed as non-fiduciary services in phone centers and on Websites:

- Referral of business to an advisor
- Providing guidance for IRA Rollovers

The Limited Fiduciary provides these fiduciary services and meets the requirement for a 408(g) Exemption that affords protection from fiduciary liability for these services. This relief permits the financial institution to continue to serve advisors and retail clients without the fear of a fiduciary breach or the cost of expansive fiduciary protection.

Financial institutions already have many of the requirements in place and will find the transition to a Limited Fiduciary a relatively simple process.

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What are the Limited Fiduciary Requirements

The central requirement of a Limited Fiduciary is to formally state the use of the 408(g) exemption for the purposes of advising clients regarding the selection of an adviser or the advisability of rolling assets out of an employer sponsored plan or both. Use of the 408(g) exemption will require the following that are typically in place at phone centers and for Websites:

- Applicable to IRAs and ERISA plans
- Level Fee… Compensation of phone center or Website staff cannot be based on the actions that are recommended.
- Compliance with applicable securities law.
- Any resulting transaction must be at sole direction of advice recipient.
- Fees and expenses must be reasonable.
- Any terms must be as favorable as an arm's length transaction.
- Process used to select advisors or recommend rollovers must be documented and utilize generally accepted practices.
- Phone center or Website is managed in a separate affiliate.

In addition, the following will often require changes:

- Authorization by phone or electronically.
- Notification requires that certain disclosures are made. These can be included with the next statement or other communication.
- Annual Audit requires engaging an independent auditor and audit report made available to clients. Given the limited scope of services, the audit is unlikely to be very costly or complex.

What Does the Limited Fiduciary Cost?

For financial institutions that meet the baseline requirements the additional costs are:

- Preparation and insertion of "Authorization"
- Preparation and distribution of "Notification"
- Engagement of Independent Auditor (Estimated at $12,500 per year)

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