



## BITS AND PIECES

### TIPS AND IDEAS ABOUT THE FIDUCIARY RULE

August 18, 2016

#### *The Mandate*

While there is no choice about the Fiduciary Rule that makes hundreds of thousands of advisors into fiduciaries, the Best Interest Contract Exemption ("BICE") is a choice.

Many interpret BICE as a mandate that must be followed but the Department of Labor says the opposite! BICE is one alternative, and a burdensome one that carries the exposure to innumerable contract claims.

Here is what the DoL says about BICE:

*Exemptions, including this class exemption [BICE], simply provide a means to engage in a transaction otherwise prohibited by the statutes.*

*The conditions to an exemption **are not equivalent to a regulatory mandate** that conflicts with or changes the statutory remedial scheme.*

*If Advisers or Financial Institutions **do not want to be subject to contract claims**, they can*

- (1) change their compensation structure and avoid committing a prohibited transaction,*
- (2) use the statutory exemptions in ERISA section 408(b)(14) and section 408(g), or Code section 4975(d)(17) and (f)(8), or*
- (3) apply to the Department for individual exemptions tailored to their particular situations.*

The [408\(g\) Computer Model](#) alternative retains all compensation, without caps or restrictions in exchange for a certification and an audit.

May be a very good deal for hundreds of thousands of advisors and millions of clients.