



BRIEFING PAPER

**THE WORK BEHIND BICE PAPERWORK
“WHAT YOU WILL ACTUALLY HAVE TO DO”**

September 6, 2016

Abstract

Complying with the Best Interest Contract Exemption (“BICE”) requires a mountain of paperwork that commits, promises, and makes disclosures. Developing this paperwork is an enormous challenge but standing by the commitments, promises and maintaining accurate disclosures present an even greater burden for Financial Institutions and Advisers.

The structure of contractual commitments, promises and disclosures was designed to make it easy for plaintiffs to win cases against Financial Institutions and Advisers. With an enforceable contract in place there is no longer a need to show malicious intent or a violation of complex laws. Any client can win a case in virtually any court if the contract terms are violated.

Contract terms are easily violated without an infrastructure to enable and to demonstrate compliance. Take for example the central commitment to act in the client’s best interest. *To win a BICE lawsuit claiming the client’s best interests were breached, the Financial Institution or Adviser must be able to show that a recommendation (which may have lost money) was in the client’s best interest at the time it was made!*

Obtaining liability insurance coverage under these circumstances is becoming increasingly difficult.

This paper summarizes the activities necessary to support the commitments, promises and disclosures required for those who choose to enter into a best interest contract.



BRIEFING PAPER

September 6, 2016

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I(a) In general, ERISA and the Internal Revenue Code prohibit fiduciary advisers to employee benefit plans (Plans) and individual retirement plans (IRAs) from receiving compensation that varies based on their investment advice. Similarly, fiduciary advisers are prohibited from receiving compensation from third parties in connection with their advice. This exemption permits certain persons who provide investment advice to Retirement Investors, and associated Financial Institutions, Affiliates and other Related Entities, to receive such otherwise prohibited compensation as described below.

I(b) Covered transactions. This exemption permits Advisers, Financial Institutions, and their Affiliates and Related Entities, to receive compensation as a result of their provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B) to a Retirement Investor.

Introduction

To avoid engaging in prohibited transactions, adopters of the Best Interest Contract Exemption are required to communicate commitments, promises and disclosures to qualify for relief. As with other exemptions, BICE requires that a number of conditions are met. Among the most obvious is the required communications, but less visible (and far greater impact) are the actions that must be taken and steps necessary to avoid being sued.

Simply issuing communications that make commitments, promises and disclosures then failing to deliver is danger of BICE. Unlike the paperwork of the past, BICE clears the way for litigation for failure to do what is in the best interest contract.

In the past a plaintiff had to prove wrongdoing to win a case, but BICE changes that. Under BICE an unhappy client need only prove that you either did what you agreed not to do or failed to do something that you agreed to do.

The specific communications requirements vary with the circumstances and combination of circumstances.

Each of these circumstances is identified together with the required activities and those necessary to limit liability arising from a breach of contract.

The Applicability in Summary

Each of the following circumstances (see “Definitions” section) require the Financial Institution or the Adviser to commit to certain activities:

- ✓ IRAs and Non-ERISA Retirement Plans (“IRA”)
- ✓ Employer Sponsored ERISA Plans (“ERISA”)
- ✓ Level Fee Fiduciaries (“Level”)
- ✓ Bank Networking Arrangements (“Bank”)
- ✓ Proprietary Products and Third Party Payments (“Prop”)
- ✓ Purchases and Sales, Including Insurance and Annuity Contracts (“Ann”)
- ✓ Pre-Existing Transactions (“Exist”)



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September 6, 2016

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Requirements Summary

The following table presents various typical situations and the number of regulatory issues affecting each under BICE. Note that the number of regulatory issues shown are intended to convey the magnitude of the considerations and not the scale of the tasks required or revenue impact to comply with them. (See [Budgeting for BICE](#) for details regarding the scale of the tasks and revenue changes involved.)

Typical Situation	No. of Issues
<u>For IRA Business</u>	
IRA with Product Provider Compensation (3 rd Party)	32
IRA with Level Fee from 3 rd Party	8
IRA with Fixed Income Annuities (not Level Fee)	34
Existing IRA Account	5
<u>For 401(k) Business</u>	
401(k) with Proprietary Funds	31
401(k) with Level Fee from 3 rd Party	8
401(k) with Fixed Income Annuities (not Level Fee)	33
Existing 401(k) Account	5



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September 6, 2016

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II(a)(1)(i) New Contracts. Prior to or at the same time as the execution of the recommended transaction, the Financial Institution enters into a written contract with the Retirement Investor acting on behalf of the Plan, participant or beneficiary account, or IRA, incorporating the terms required by Section II(b)-(d).

II(a)(1)(ii) *Amendment of Existing Contracts by Negative Consent.* As an alternative to executing a contract in the manner set forth in the preceding paragraph, the Financial Institution may amend Existing Contracts to include the terms required in Section II(b)-(d) by delivering the proposed amendment and the disclosure required by Section II(e) to the Retirement Investor prior to January 1, 2018, and considering the failure to terminate the amended contract within 30 days as assent.

COMMUNICATION

Signed enforceable written contract

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓						
No		✓	✓	✓			✓

Required Activities

- Negotiate contract with client
- Make and approve any changes necessary
- Obtain client signature
- Maintain contracts on website

COMMUNICATION

Negative consent to enforceable written contract

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No			✓	✓			✓

Required Activities

- Send notice and contract to Retirement Investor
- Respond to questions/objections
- Maintain contracts on website



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September 6, 2016

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II(b) *Fiduciary*. The Financial Institution affirmatively states in writing that it and the Adviser(s) act as fiduciaries under ERISA or the Code, or both, with respect to any investment advice provided by the Financial Institution or the Adviser subject to the contract or, in the case of an ERISA plan, with respect to any investment recommendations regarding the Plan or participant or beneficiary account.

COMMUNICATION

Fiduciary Declaration

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No				✓			✓

Required Activities

- Examine existing contracts and other communication that contradict fiduciary status
- Take steps necessary to qualify for liability insurance coverage
- Obtain required liability insurance coverage
- Provide training for Advisers and compliance to operate in a fiduciary capacity.

II(c)(1) When providing investment advice to the Retirement Investor, the Financial Institution and the Adviser(s) provide investment advice that is, at the time of the recommendation, in the Best Interest of the Retirement Investor.

COMMUNICATION

Contract: Impartial Conduct Standard:

Best Interest

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓		✓	✓		
No							✓

Required Activities

- Determine what the best interest of the Retirement Investor is.
- Use determination to make recommendation of asset allocation and specific investments that an expert would be expected to make.
- Recommendations must be based on investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor.
- Steps must be taken to show that recommendation was in no way based on the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party;



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September 6, 2016

The Work Behind BICE Paperwork

II(c)(2) The recommended transaction will not cause the Financial Institution, Adviser or their Affiliates or Related Entities to receive, directly or indirectly, compensation for their services that is in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).

II(c)(3) Statements by the Financial Institution and its Advisers to the Retirement Investor about the recommended transaction, fees and compensation, Material Conflicts of Interest, and any other matters relevant to a Retirement Investor's investment decisions, will not be materially misleading at the time they are made.

COMMUNICATION

Contract: Impartial Conduct Standard

Excessive Compensation

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓		✓	✓	✓	
No							✓

Required Activities

Financial Institution or Adviser must estimate the compensation to be received, directly and indirectly, as a result of the recommendation and determine that compensation for their services that is not in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).

Revise recommendation if necessary to avoid excessive compensation.

COMMUNICATION

Contract: Impartial Conduct Standard

Misleading Statements

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓		✓			
No							✓

Required Activities

All communication regarding the recommendation, fees and compensation, Material Conflicts of Interest, and any other matters relevant to a Retirement Investor's investment decisions must be examined for statements that are materially misleading. Communication must be revised if such statements are found.



BRIEFING PAPER

September 6, 2016

The Work Behind BICE Paperwork

II(d)(1) The Financial Institution has adopted and will comply with written policies and procedures reasonably and prudently designed to ensure that its Advisers adhere to the Impartial Conduct Standards set forth in Section II(c)

II(d)(2) In formulating its policies and procedures, the Financial Institution has specifically identified and documented its Material Conflicts of Interest; adopted measures reasonably and prudently designed to prevent Material Conflicts of Interest from causing violations of the Impartial Conduct Standards set forth in Section II(c); and designated a person or persons, identified by name, title or function, responsible for addressing Material Conflicts of Interest and monitoring their Advisers' adherence to the Impartial Conduct Standards.

COMMUNICATION

Warranties:

Compliance with Impartial Conduct Standard

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Establish policies and procedures to require compliance with Impartial Conduct Standards

Train advisers to follow policies and procedures.

Establish controls/oversight to ensure adherence to policies and procedures.

COMMUNICATION

Warranties:

Material Conflicts of Interest Prevented

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Identify and document all Material Conflicts of Interest

Designate a person or persons, identified by name, title or function, responsible for addressing Material Conflicts of Interest and monitoring their Advisers' adherence to the Impartial Conduct Standards.

Prepare, train and empower that person(s) to perform the monitoring.



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September 6, 2016

The Work Behind BICE Paperwork

II(d)(3) The Financial Institution's policies and procedures require that neither the Financial Institution nor (to the best of its knowledge) any Affiliate or Related Entity use or rely upon quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation or other actions or incentives... (such compensation practices can include differential compensation based on neutral factors tied to the differences in the services delivered...).

II(e)(1) States the Best Interest standard of care owed by the Adviser and Financial Institution to the Retirement Investor; informs the Retirement Investor of the services provided by the Financial Institution and the Adviser; and describes how the Retirement Investor will pay for services, directly or through Third Party Payments.

COMMUNICATION

Warranties:

Differential Compensation

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Establish systems and procedures to prevent payments of any form of differential compensation (quotas, appraisals, performance or personnel actions, bonuses, contests, special awards or other actions or incentives) that are not based on neutral factors.

Communicate the policy to all affected advisers.

COMMUNICATION

Disclosures:

Standard of Care, Services and Compensation

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No			✓	✓			✓

Required Activities

Prepare for each client based on the specific services being offered, products being recommended and all expected compensation.

Deliver to client at contract or up until execution of recommended transaction.



BRIEFING PAPER

September 6, 2016

The Work Behind BICE Paperwork

II(e)(2) Describes Material Conflicts of Interest; discloses any fees or charges the Financial Institution, its Affiliates, or the Adviser imposes upon the Retirement Investor or the Retirement Investor's account; and... receive from third parties in connection with investments recommended...

COMMUNICATION

Disclosures:

Conflicts of Interest

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No			✓	✓			✓

Required Activities

Prepare disclosure specifically applicable to the client.
Deliver to client at contract or up until execution of recommended transaction.

II(e)(3) Informs the Retirement Investor that the Investor has the right to obtain copies of the Financial Institution's written description of its policies and procedures adopted in accordance with Section II(d)... and describes how the Retirement Investor can get the information, free of charge;

COMMUNICATION

Disclosures

Rights to More Information

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No			✓	✓			✓

Required Activities

Make additional information available and describe how client may request or access it.
Deliver disclosure to client at contract or up until execution of recommended transaction.



BRIEFING PAPER

September 6, 2016

The Work Behind BICE Paperwork

II(e)(4) Includes a link to the Financial Institution's Web site as required by Section III(b), and informs the Retirement Investor that: (i) Model contract disclosures updated as necessary on a quarterly basis are maintained on the Web site...

II(e)(5) Discloses to the Retirement Investor whether the Financial Institution offers Proprietary Products or receives Third Party Payments with respect to any recommended investments; and to the extent the Financial Institution or Adviser limits investment recommendations, in whole or part, to Proprietary Products or investments that generate Third Party Payments, notifies the Retirement Investor of the limitations placed on the universe of investments that the Adviser may offer...

COMMUNICATION

Disclosures

Link to Web site with updated disclosures

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No			✓	✓			✓

Required Activities

Update disclosures quarterly and post to Web site.

Deliver disclosure to client at contract or up until execution of recommended transaction.

COMMUNICATION

Disclosures

Proprietary Products or Third Party Payments

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No			✓	✓			✓

Required Activities

Identify which, if any, proprietary products or third party payments are applicable to each client and limitations that affect that client.

Deliver disclosure to client at contract or up until execution of recommended transaction.



BRIEFING PAPER

September 6, 2016

The Work Behind BICE Paperwork

II(e)(6) Provides contact information (telephone and email) for a representative of the Financial Institution that the Retirement Investor can use to contact the Financial Institution with any concerns about the advice or service they have received;

COMMUNICATION

Disclosures

Contact information

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No			✓	✓			✓

Required Activities

Designate contact point for client and prepare to answer client questions.

Deliver disclosure to client at contract or up until execution of recommended transaction.

II(e)(7) Describes whether or not the Adviser and Financial Institution will monitor the Retirement Investor's investments and alert the Retirement Investor to any recommended change to those investments, and, if so monitoring, the frequency with which the monitoring will occur and the reasons for which the Retirement Investor will be alerted.

COMMUNICATION

Disclosures

Ongoing Monitoring

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No			✓	✓			✓

Required Activities

Establish systems and procedures for monitoring client accounts to incorporate the passage of time, change in market conditions and change in client circumstances.

Train advisers on use of monitoring.

Determine which clients will be monitored and at what frequency.

Prepare disclosure appropriate for each client.

Deliver disclosure to client at contract or up until execution of recommended transaction.



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September 6, 2016

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II(f)(1) Exculpatory provisions disclaiming or otherwise limiting liability of the Adviser or Financial Institution for a violation of the contract's terms

COMMUNICATION

Ineligible Contractual Provisions.

Limits to Liability

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No			✓	✓			✓

Required Activities

Obtain liability insurance to cover any added exposure.

II(f)(2) Except as provided in paragraph (f)(4) of this Section, a provision under which the Plan, IRA or Retirement Investor waives or qualifies its right to bring or participate in a class action or other representative action in court in a dispute with the Adviser or Financial Institution, or in an individual or class claim agrees to an amount representing liquidated damages for breach of the contract...

COMMUNICATION

Ineligible Contractual Provisions

Waiver of Right to Bring Action

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No			✓	✓			✓

Required Activities

Obtain liability insurance to cover any added exposure.

II(f)(3) Agreements to arbitrate or mediate individual claims in venues that are distant or that otherwise unreasonably limit the ability of the Retirement Investors to assert the claims safeguarded by this exemption

COMMUNICATION

Ineligible Contractual Provisions

Arbitration Terms

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No			✓	✓			✓

Required Activities

Obtain liability insurance to cover any added exposure.



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September 6, 2016

The Work Behind BICE Paperwork

II(h)(3)(i) In the case of a recommendation to roll over from an ERISA Plan to an IRA, the Financial Institution documents the specific reason or reasons why the recommendation was considered to be in the Best Interest of the Retirement Investor.

COMMUNICATION

Level Fee Fiduciaries

Rollover Recommendations

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes			✓				
No				✓			✓

Required Activities

Develop systems and procedures to determine when a rollover is in the client's best interest, make appropriate recommendation and maintain records of the basis for the recommendation.

Develop marketing program that employs Rollover system.

Train advisors to use Rollover system.

III(a)(1) States the Best Interest standard of care owed by the Adviser and Financial Institution to the Retirement Investor; and describes any Material Conflicts of Interest;

COMMUNICATION

Transaction Disclosure

Best Interest standard of care owed

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Add standard of care and list conflicts of interest to transaction confirmation.

Update transaction confirmation as conflicts of interest change.



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September 6, 2016

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III(a)(2) Informs the Retirement Investor that the Retirement Investor has the right to obtain copies of the Financial Institution's written description of its policies and procedures adopted in accordance with Section II(d), as well as specific disclosure of costs, fees and other compensation including Third Party Payments regarding recommended transactions.

COMMUNICATION

Transaction Disclosure

Right to obtain copies of policies and procedures

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Add this right, costs, fees and other compensation to transaction confirmation.

III(a)(3) Includes a link to the Financial Institution's Web site as required by Section III(b)

COMMUNICATION

Transaction Disclosure

Link to the Financial Institution's Web site

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Add link to transaction confirmation.

III(b)(1)(i) A discussion of the Financial Institution's business model and the Material Conflicts of Interest associated with that business model;

COMMUNICATION

Web Disclosure

Financial Institution's business model

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Write description of business model, including material conflicts of interest.

Add required information to Web site and update at least quarterly.



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September 6, 2016

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III(b)(1)(ii) A schedule of typical account or contract fees and service charges;

COMMUNICATION

Web Disclosure

Schedule of fees and charges

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Prepare schedule of typical fees and service charges.

Add required information to Web site and update at least quarterly.

III(b)(1)(iii) A model contract or other model notice of the contractual terms (if applicable) and required disclosures described in Section II(b)-(e), which are reviewed for accuracy no less frequently than quarterly and updated within 30 days if necessary;

COMMUNICATION

Web Disclosure

Model Contract and Disclosures

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Prepare a model contract and disclosures.

Add required information to Web site and update at least quarterly.



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September 6, 2016

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III(b)(1)(iv) A written description of the Financial Institution's policies and procedures that accurately describes or summarizes key components of the policies and procedures relating to conflict-mitigation and incentive practices in a manner that permits Retirement Investors to make an informed judgment about the stringency of the Financial Institution's protections against conflicts of interest;

III(b)(1)(v) To the extent applicable, a list of all product manufacturers and other parties with whom the Financial Institution maintains arrangements that provide Third Party Payments to either the Adviser or the Financial Institution with respect to specific investment products or classes of investments recommended to Retirement Investors; a description of the arrangements, including a statement on whether and how these arrangements impact Adviser compensation, and a statement on any benefits the Financial Institution provides to the product manufacturers or other parties in exchange for the Third Party Payments;

COMMUNICATION

Web Disclosure

Policies and Procedures Relating To Conflict-Mitigation and Incentive Practices

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Obtain policies and procedures created under "Warranties" (Section II(d)).

Add required information to Web site and update at least quarterly.

COMMUNICATION

Web Disclosure

Product Manufacturer Arrangements

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Write description of manufacturer arrangements, including applicable products or classes, effect on Adviser compensation and benefits derived by each manufacturer.

Add required information to Web site and update at least quarterly.



BRIEFING PAPER

September 6, 2016

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(III)(b)(1)(vi) Disclosure of the Financial Institution's compensation and incentive arrangements with Advisers including, if applicable, any incentives (including both cash and non-cash compensation or awards) to Advisers for recommending particular product manufacturers, investments or categories of investments to Retirement Investors, or for Advisers to move to the Financial Institution from another firm or to stay at the Financial Institution, and a full and fair description of any payout or compensation grids, but not including information that is specific to any individual Adviser's compensation or compensation arrangement.

IV(b)(1) Prior to or at the same time as the execution of the recommended transaction, the Retirement Investor is clearly and prominently informed in writing that the Financial Institution offers Proprietary Products or receives Third Party Payments with respect to the purchase, sale, exchange, or holding of recommended investments; and the Retirement Investor is informed in writing of the limitations placed on the universe of investments that the Adviser may recommend to the Retirement Investor..

COMMUNICATION

Web Disclosure

Incentive Compensation Arrangements

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓			✓		
No			✓	✓			✓

Required Activities

Write description of any compensation received to recommend a particular product and the payout to Advisers.

Add required information to Web site and update at least quarterly.

COMMUNICATION

Proprietary Products and Third Party Payments

Limitations Placed on the Universe of Investments

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes					✓		
No				✓			✓

Required Activities

Write description of proprietary products and third party payment arrangement, including any limitations placed on the use of other products, for disclosure before a recommended transaction is executed.

Make the disclosure prior to executing the recommended transaction.



BRIEFING PAPER

September 6, 2016

The Work Behind BICE Paperwork

V(a) *EBSA Disclosure*. Before receiving compensation in reliance on the exemption in Section I, the Financial Institution notifies the Department of its intention to rely on this exemption. The notice will remain in effect until revoked in writing by the Financial Institution.

COMMUNICATION

Disclosure to the Department and Recordkeeping

EBSA Disclosure

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No				✓			✓

Required Activities

Make the disclosure prior to receiving compensation.

V(b) *Recordkeeping*. The Financial Institution maintains for a period of six (6) years, in a manner that is reasonably accessible for examination, the records necessary to enable the persons described in paragraph (c) of this Section to determine whether the conditions of this exemption have been met with respect to a transaction.

COMMUNICATION

Disclosure to the Department and Recordkeeping

Recordkeeping

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes	✓	✓					
No				✓			✓

Required Activities

Create recordkeeping system and provide for retrieval by authorized persons.

VI(c)(1) The transaction is effected by the Financial Institution in the ordinary course of its business

COMMUNICATION

Exemption for Purchases and Sales, Including Insurance and Annuity Contract

Usual Course of Business

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes						✓	
No				✓			✓

Required Activities

Maintain records to show that such transactions are in the normal course of business.



BRIEFING PAPER

September 6, 2016

The Work Behind BICE Paperwork

VI(c)(3) The terms of the transaction are at least as favorable to the Plan, participant or beneficiary account, or IRA as the terms generally available in an arm's length transaction with an unrelated party.

COMMUNICATION

Exemption for Purchases and Sales, Including Insurance and Annuity Contract

Arm's Length Transaction

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes						✓	
No				✓			✓

Required Activities

Maintain records to show that such transactions are arm's length.

COMMUNICATION

Exemption for Pre-Existing Transactions

Compensation Receipt

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes							✓
No				✓			

Required Activities

Maintain records of receipt of compensation attributable to clients who are qualify for the pre-existing exemption.

Check for expiration and renewal, and transfer from pre-existing status when applicable.

Meet BICE requirements for transferred clients.

VII(b)(1) The compensation is received pursuant to an agreement, arrangement or understanding that was entered into prior to the Applicability Date and that has not expired or come up for renewal post-Applicability Date;



BRIEFING PAPER

September 6, 2016

The Work Behind BICE Paperwork

VII(b)(2) The purchase, exchange, holding or sale of the securities or other investment property was not otherwise a non-exempt prohibited transaction pursuant to ERISA section 406 and Code section 4975 on the date it occurred;

VII(b)(3) The compensation is not received in connection with the Plan's, participant or beneficiary account's or IRA's investment of additional amounts in the previously acquired investment vehicle; except that for avoidance of doubt, the exemption does apply to a recommendation to exchange investments within a mutual fund family or variable annuity contract) pursuant to an exchange privilege or rebalancing program that was established before the Applicability Date, provided that the recommendation does not result in the Adviser and Financial Institution, or their Affiliates or Related Entities, receiving more compensation (either as a fixed dollar amount or a percentage of assets) than they were entitled to receive prior to the Applicability Date;

COMMUNICATION

Exemption for Pre-Existing Transactions

Prior Violations

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes							✓
No				✓			

Required Activities

Examine records to determine if a prohibited transaction occurred in the past.

If prohibited transaction occurred, client does not qualify for pre-existing exemption.

Meet BICE requirements for non-qualifying clients.

COMMUNICATION

Exemption for Pre-Existing Transactions

Additional Compensation

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes							✓
No				✓			

Required Activities

Monitor transactions in pre-existing accounts for additional compensation.

If a transaction occurred that produces additional compensation, client is transferred from pre-existing status.

Meet BICE requirements for transferred clients.



BRIEFING PAPER

September 6, 2016

The Work Behind BICE Paperwork

VII(b)(4) The amount of the compensation paid, directly or indirectly, to the Adviser, Financial Institution, or their Affiliates or Related Entities in connection with the transaction is not in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2)

(5) Any investment recommendations made after the Applicability Date by the Financial Institution or Adviser with respect to the securities or other investment property reflect the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, and are made without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Entity, or other party.

COMMUNICATION

Exemption for Pre-Existing Transactions

Excessive Compensation

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes							✓
No				✓			

Required Activities

Make determination if compensation from client has been excessive in relation to the services provided.

If excessive, client does not qualify for pre-existing exemption.

Meet BICE requirements for non-qualifying clients.

COMMUNICATION

Exemption for Pre-Existing Transactions

Additional Recommendation

Applicability

	IRA	ERISA	Level	Bank	Prop	Ann	Exist
Yes							✓
No				✓			

Required Activities

Monitor transactions in pre-existing accounts for additional recommendations.

If there is an additional recommendation, it must be tested using the same standard described in "Best Interest" section of the "Impartial Conduct Standards" (II(c)(1)).



BRIEFING PAPER

September 6, 2016

The Work Behind BICE Paperwork

Definitions

- ✓ **IRAs and Non-ERISA Retirement Plans (“IRA”)**
Contracts with Respect to Investments in IRAs and Other Plans Not Covered by Title I of ERISA.
- ✓ **Employer Sponsored ERISA Plans (“ERISA”)**
Plans that are covered by Title I of ERISA.
- ✓ **Level Fee Fiduciaries (“Level”)**
If the only fee received by the Financial Institution, the Adviser and any Affiliate in connection with advisory or investment management services to the Plan or IRA assets is a Level Fee that is disclosed in advance to the Retirement Investor.
- ✓ **Bank Networking Arrangements (“Bank”)**
“Bank Networking Arrangement” is an arrangement for the referral of retail non-deposit investment products that satisfies applicable federal banking, securities and insurance regulation
- ✓ **Proprietary Products and Third Party Payments (“Prop”)**
A Financial Institution that at the time of the transaction restricts Advisers' investment recommendations, in whole or part, to Proprietary Products or to investments that generate Third Party Payments.
- ✓ **Purchases and Sales, Including Insurance and Annuity Contracts (“Ann”)**
Purchase by a Plan, participant or beneficiary account, or IRA of an investment product, including insurance or annuity product from an insurance company that is a service provider to the Plan or IRA.
- ✓ **Pre-Existing Transactions (“Exist”)**
This exemption permits Advisers, Financial Institutions, and their Affiliates and Related Entities, to receive compensation, such as 12b-1 fees, in connection with a Plan's, participant or beneficiary account's or IRA's purchase, sale, exchange, or holding of securities or other investment property that was acquired prior to the Applicability Date, subject to certain conditions.



BRIEFING PAPER

BUDGETING FOR BICE GUIDANCE AND WORKSHEET

THE PAPER PROVIDES THE MOST DETAILED DESCRIPTION OF EVERY COST AND REVENUE LOSS THAT CAN BE EXPECTED FROM ADOPTING THE BIC EXEMPTION.

- 13 COST ELEMENTS
- COMPARISON WITH COMPUTER MODEL AND LEVEL FEE APPROACH
- FIRST YEAR AND SUCCEEDING YEAR
- RESOURCES, INCLUDING LEGAL AND COMPLIANCE, SYSTEMS, COMMUNICATION, RISK MANAGEMENT, ADVISOR TIME, ETC.
- VARIABLES AFFECTING THE BUDGET

ACCOMPANYING THE PAPER THAT FACILITATES BUDGET PREPARATION WITH INITIAL ESTIMATES AND ASSUMPTIONS THAT CAN BE ADAPTED TO A SPECIFIC FIRM.

- FIRM SIZE AND BUSINESS MIX
- STRUCTURE OF ADVISOR ARRANGEMENTS AND PAYOUTS
- REVENUE AND SOURCES
- INTERNAL COSTS AND RATES TO BE APPLIED

CLICK ON LINK TO LEARN MORE ABOUT:
[BUDGETING FOR BICE](#)

ALTERNATIVE TO BICE ADVISOR'S COMPUTER MODEL

THE DOL SPECIFIES THAT A CERTIFIED COMPUTER MODEL (ERISA 408(G)) IS AN ALTERNATIVE TO AN ADVISOR USING THE BIC EXEMPTION.

THE CERTIFIED COMPUTER MODEL:

- AVOIDS THE ACTIVITIES AND PAPERWORK THAT BICE REQUIRES.
- RETAINS EXISTING ADVISOR COMPENSATION
- INCREASES ADVISOR CAPACITY TO HANDLE NEW BUSINESS.
- ELIMINATES THE RISKS OF "ENFORCEABLE CONTRACTS".
- ENABLES ROLLOVER BUSINESS.
- MAINTAIN PROFITABILITY OF SMALL ACCOUNTS.
- AUTOMATES THE SAME INVESTMENT PRACTICES THE ADVISOR USES TODAY.

REQUIREMENTS

- CERTIFICATION OF COMPLIANCE.
- ANNUAL AUDIT OF COMPUTER MODEL

CLICK ON LINK TO LEARN MORE ABOUT:
[COMPUTER MODEL CERTIFICATION](#)