

DOL Fiduciary Rule: Insight from DOL Staff

Featuring:

- Timothy Hauser, Department of Labor
- Ali Khawar, Department of Labor
- Fred Reish, Faegre Drinker (Moderator)



CEFLI 2024 Premier Partners



CEFLI 2024 Affiliate Members

Gold:



Bronze:



CEFLI Reminders

We Will Provide

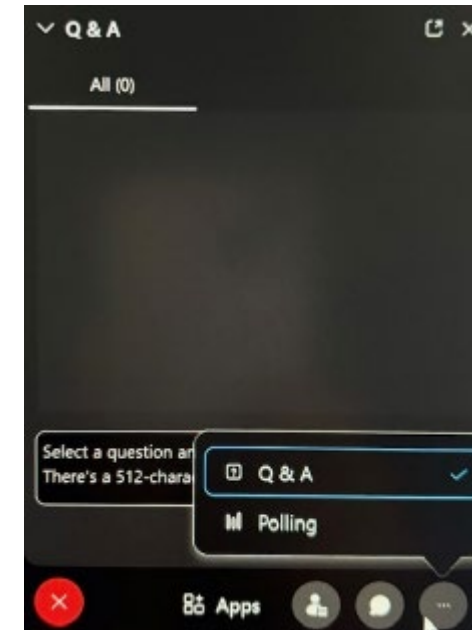
- A link to the recording
- A copy of the slides
- A Certificate of Attendance template (to attendees of the live event)

Regarding Questions – 3 Prongs

1. Short pause- questions regarding the stay.
2. The next priority will be questions submitted in advance by CEFLI’s Members.
3. If we have time at the end, we’ll invite you to submit any additional questions.

If Submitting Questions:

- Please use the **Q&A Function** (not the Chat function).



Antitrust Reminder

The Compliance and Ethics Forum for Life Insurers (CEFLI) is committed to adhering strictly to the letter and spirit of the antitrust laws. Meetings conducted under CEFLI's auspices are designed solely to provide a forum for the expression of various points of view on topics described in the programs or agendas for such meetings.

Under no circumstances shall CEFLI meetings be used as a means for competing companies or firms to reach any understanding -- expressed or implied -- which restricts competition or in any way impairs the ability of members to exercise independent business judgment regarding matters affecting competition. Accordingly, appropriate objection will be made to any presentation or colloquy that presents a risk from the standpoint of the antitrust laws.

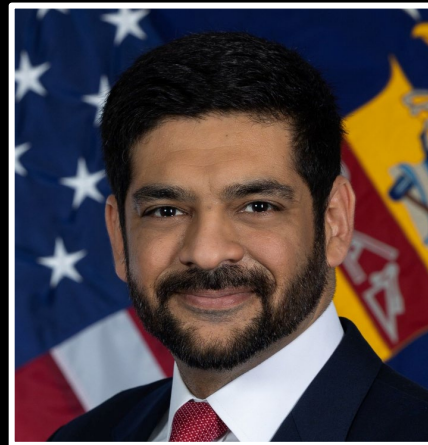
Webinar Agenda

1. Introductions
2. Stay Issued by the US District Court for the Eastern District of Texas
3. CEFLI Member Questions – Pre-submitted
4. CEFLI Member Questions – Submitted via the Webex Q&A Function (Time Permitting)
5. CEFLI Reminders

Presenters



Timothy Hauser
*Deputy Assistant
Secretary*
Department of Labor



Ali Khawar
*Principal Deputy Assistant
Secretary*
Department of Labor



Fred Reish (Moderator)
Partner
Faegre Drinker

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Current Status

Stay issued (07/25/24)



SEC Staff Bulletin

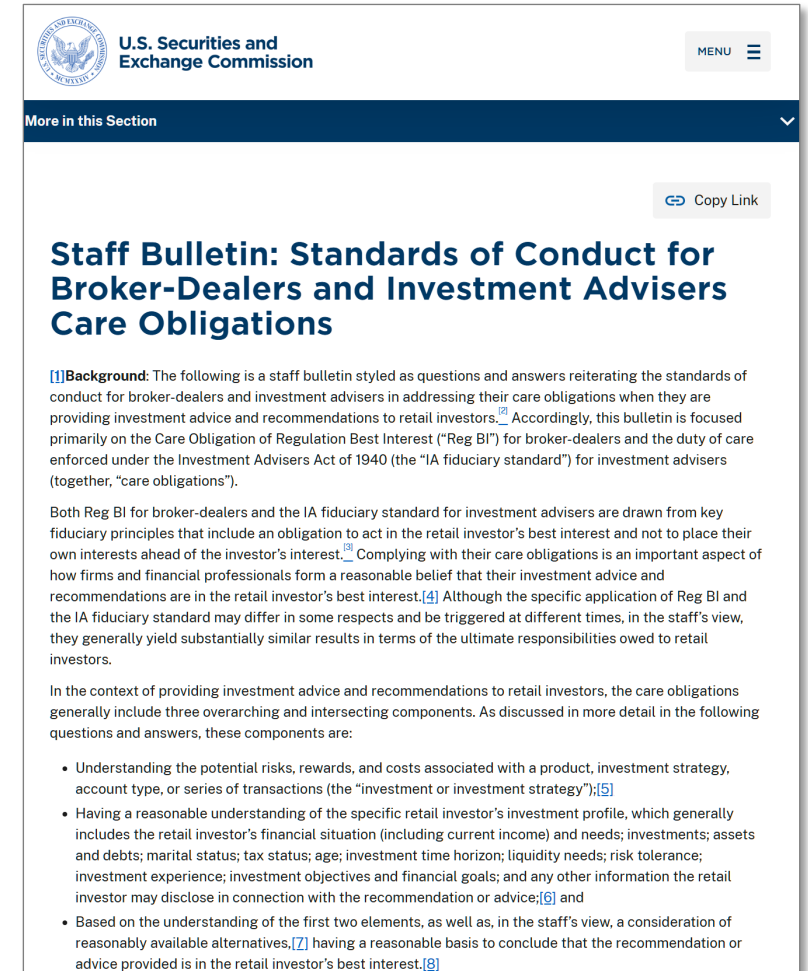


U.S. Securities and Exchange Commission

On April 20, 2023, the U.S. Securities and Exchange Commission (SEC) published an FAQ-style bulletin on the care obligations of broker-dealers and investment advisers in providing investment advice and recommendations to retail investors.

- Recognizing the impact between “insurance-only” annuity distribution vs. “securities insurance” distribution.

[Link to the Bulletin.](#)

The screenshot shows the SEC website header with the logo and "U.S. Securities and Exchange Commission" text. Below the header is a dark blue bar with "More in this Section" and a dropdown arrow. To the right is a "MENU" icon. Below the bar is a "Copy Link" button. The main content area features the title "Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations". The text below the title discusses the background of the bulletin, its focus on the Care Obligation of Regulation Best Interest (Reg BI), and the IA fiduciary standard. It also mentions that the bulletin is styled as questions and answers. The text further explains that both Reg BI and the IA fiduciary standard are drawn from key fiduciary principles and that the bulletin is focused on the Care Obligation of Regulation Best Interest (Reg BI) for broker-dealers and the duty of care enforced under the Investment Advisers Act of 1940 (the "IA fiduciary standard") for investment advisers (together, "care obligations"). It notes that both Reg BI for broker-dealers and the IA fiduciary standard for investment advisers are drawn from key fiduciary principles that include an obligation to act in the retail investor's best interest and not to place their own interests ahead of the investor's interest. Complying with their care obligations is an important aspect of how firms and financial professionals form a reasonable belief that their investment advice and recommendations are in the retail investor's best interest. Although the specific application of Reg BI and the IA fiduciary standard may differ in some respects and be triggered at different times, in the staff's view, they generally yield substantially similar results in terms of the ultimate responsibilities owed to retail investors. In the context of providing investment advice and recommendations to retail investors, the care obligations generally include three overarching and intersecting components. As discussed in more detail in the following questions and answers, these components are:

- Understanding the potential risks, rewards, and costs associated with a product, investment strategy, account type, or series of transactions (the "investment or investment strategy");^[5]
- Having a reasonable understanding of the specific retail investor's investment profile, which generally includes the retail investor's financial situation (including current income) and needs; investments; assets and debts; marital status; tax status; age; investment time horizon; liquidity needs; risk tolerance; investment experience; investment objectives and financial goals; and any other information the retail investor may disclose in connection with the recommendation or advice;^[6] and
- Based on the understanding of the first two elements, as well as, in the staff's view, a consideration of reasonably available alternatives,^[7] having a reasonable basis to conclude that the recommendation or advice provided is in the retail investor's best interest.^[8]

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Questions

Questions on What was Just Covered





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Previously Submitted Questions (8) Elements of the Rule





Q1. For sales of fixed products via independent producers, what are the key changes with respect to relying on the PTE 84-24 for September 23, 2024 and for September 23, 2025 for the life insurance company?



Q2. Pre-need annuity sales involve the sale of an annuity product for purposes of funding final expenses. Often, a single premium (paid by the consumer, not by an employer) is paid up front and arrangements are made with a funeral home as part of a pre-planning effort. Upon death, the proceeds from the annuity are paid to the funeral home for services rendered. Are pre-need/funeral annuity product sales subject to the Rule?



Q3. Are individual or group whole life insurance policy sales subject to the Rule? If so, what actions are required of insurers by September 23, 2024 and by September 23, 2025.



Q4. Is a life insurance company allowed to modify the fiduciary acknowledgment disclosure to incorporate additional text noting specific services and interactions that are not fiduciary in nature?



Q5. We understand if an insurance-only licensed producer recommends that a client fund a fixed annuity with Title I funds [i.e., mutual funds held in a 401(k)], the DOL has taken the position that the producer does not need to be FINRA registered in order to meet requirements under PTE 84-24 with respect to determining whether the recommendation is in the client's best interest. Can the DOL elaborate on its position in this area?



Q6. Please comment on the timing of the retrospective review requirement. Should the insurer's first annual review (covering calendar year 2025) include transactions from September 23, 2025 - December 31, 2025? Should the annual review be calendar year based or follow a different approach.



Q7. Regarding the retrospective review, what should the process look like (i.e., the approach, the components of the review, etc.) and how should the subsequent report be structured?



Q8. Does the Rule require that a numeric summary/comparison be presented to a consumer when the source of funds for an annuity contract constitutes a rollover from an ERISA Title I plan or an IRA? If so, what must be disclosed to the retirement investor and when must it be provided? Also, at what point in the application and contract issue process should the numeric summary/comparison be presented to the consumer?

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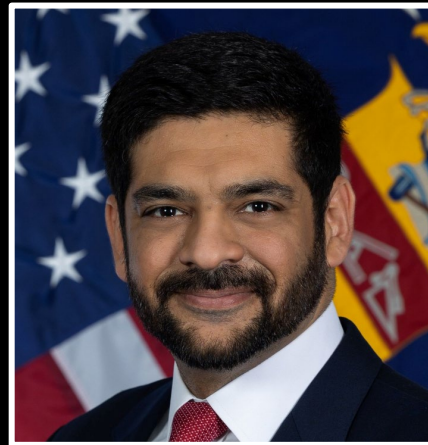
Remaining Questions Time Permitting



Thank You Timothy, Ali and Fred!



Timothy Hauser
*Deputy Assistant
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Department of Labor



Ali Khawar
*Principal Deputy Assistant
Secretary*
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Fred Reish (Moderator)
Partner
Faegre Drinker



Important Reminders

Reminders

1. Please complete our **1-minute post event survey** when you receive the email, shortly.
2. The **presentation deck** will be emailed to you within 24-48 hours.
3. A **Certificate of Attendance** template will be included in the email. Note: CEFLI's materials are not filed for CLE or CE with any State Bar or other organizations.

CLE Reference Information

While CEFLI does not file its materials with any State Bar Associations, if you plan to self-submit a copy of the presentation deck and your completed Certificate of Attendance form to a Bar Association for **potential CLE consideration**, please know:

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- Participants are required to register to join CEFLI's events.
- CEFLI provides a Certificate of Attendance form only to individuals who attended a live event.
- We do not provide bios for Webinar speakers though speaker names, titles and affiliations are included within the presentation.
- We do not have a way of knowing how many attorneys attend a CEFLI event.
- While we do provide a timed agenda for CEFLI's one-hour events.
- Participants may ask questions of the speakers during webinar event by clicking on the Q&A feature in the Webex.
- CEFLI is not a marketing organization. It is a compliance and ethics organization whose mission is to support professionals by providing educational opportunities that address current compliance matters.

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