

**To:** Financial Intermediary Partners and BPAS Clients  
**From:** Paul Neveu,  
President, BPAS Plan Administration & Recordkeeping Services  
**Re:** Summary of Compliance Steps for New Fiduciary Regulations  
**Date:** February, 2017



As you are aware, the new Department of Labor (DOL) Conflict of Interest Rule is slated to take effect on April 1, 2017. (At the time this memo was authored, we continue to receive conflicting information on whether the DOL will extend the effective date by 180 days with an additional public comment period) The new regulation makes many changes to the retirement plan and IRA landscape, centering on a “best interest standard” that will be extended to many additional interactions between service providers, plan sponsors and participants. As a result of the new Regulation, providers are making changes to their systems, disclosures, and procedures. This memo outlines steps BPAS is taking to comply. We have prepared this memo in a Q&A Format to answer questions raised by many partners.

**General observation:** When BPAS prepared for the 408(b)(2) fee disclosure regulation in 2011 and 2012, we implemented changes to our practice that have proven to be *very favorable* under the new fiduciary regulation. In particular, because we are now pricing most new plans using a “platform fee” – where any forms of revenue sharing are offset against the platform fee at the level of each fund – most conflicts of interest have been completely eliminated in the fund review, selection, and monitoring process both for BPAS *and* our financial intermediary partners. However, there are still certain changes we need to make to comply with the regulation. For example, certain plans have not yet been normalized because they were not subject to ERISA, a few financial intermediaries continue to operate under a Registered Rep approach for a subset of plans, and certain funds continue to make fixed-dollar sub-transfer agent payments instead of basis points. So, while the structure for BPAS is one of the most favorable in the industry for complying with the new regulations, we will continue to implement changes on these and other matters. Even if the new regulation is repealed or significantly changed, our view is that most of the changes it brings about are favorable to plan sponsor and participant relationships and make sense on their own merits.

**Q. In general, what approach will BPAS take to comply with the new regulation?**

A. In consultation with the Wagner Law Firm (a pre-eminent national ERISA compliance practice), BPAS has reviewed our entire retirement program subject to the new Regulation. We have devised a compliance plan that covers many areas, including marketing and sales materials, education materials, the operations of our call center, the handling of participant calls, incoming and outgoing rollovers, client fee arrangements; service agreements, our level compensation program and offset process, revenue sharing arrangements with mutual fund families, financial partner compensation arrangements, and more. For each area, we created a proposed compliance approach and follow up steps. The Wagner Law Firm has been reviewing this blueprint and guiding our action plan.

**Q. What is fee normalization, and what benefits does it provide?**

A. Fee normalization is the methodology used by BPAS to handle the revenue sharing we receive from fund families traded on our platform. While we have been using this approach for nearly a decade, we rolled it out across our business five years ago to comply with Regulations 408(b)(2)s and 404a-5. Under this approach, all forms of revenue sharing are used offset fees at the level of each fund, with a “true up” fee applied to each fund to make up the difference. This methodology ensures that fees are borne equitably across participants in the plan with no intra-plan subsidies or fairness issues, and that *all types of*

*remuneration* are treated and applied equally (12b-1 fees, sub transfer agent fees, true up fees, etc.). Fee normalization avoids numerous problems associated with the “ERISA Recapture Account” approach used by many other providers, where revenue sharing is placed into a plan-wide “bucket” and used to pay fees, with no discernment about where the fees actually came from, significant timing issues from participants entering or leaving the plan, and other problems. Fee normalization provides a fair, transparent, and automated approach to handling fees, both for BPAS and our financial intermediary partners. It also eliminates most conflicts of interest for providers in the ongoing servicing of each plan. In fact, fee normalization would have been a perfect antidote to some of the national fee-related court cases arising in recent years. It is the best environment for today’s retirement plans to address a range of potential problems and reduce litigation risk within plans.

**Q. Will BPAS differentiate between ERISA and non-ERISA plans?**

A. While we recognize that the new regulation only applies to ERISA-covered plans and IRAs, BPAS would have a hard time suggesting that a plan not covered by ERISA is deserving of a lesser standard. Therefore, **BPAS has decided to apply these concepts evenly to all DC plan accounts.** Fee normalization simplifies life for everyone and eliminates so many conflicts. We believe it is the new standard that plan sponsors should expect – whether it is for their non-ERISA 403(b), 457 plan, KSOP, non-qualified plan, or 401(k) program. And, BPAS is pleased to deliver fee normalization to financial intermediary partners and plan sponsors alike.

**Q. How will BPAS differentiate between “level comp” and “non-level comp” financial partners?**

A. At BPAS, more than 90% of the plans we support are in conjunction with financial intermediaries – mainly Registered Investment Advisors and Bank Trust organizations who already act in a fiduciary capacity. We do have a small segment of plans where the financial intermediary continues to operate under the Registered Representative model, being compensated in the form of 12b-1 fees from mutual funds offered in the program (usually “unlevel” compensation). In these programs, we are working with the financial partner to either: A) help the partner transition plans to the RIA / level-compensation model, or B) effect a “level compensation revenue sharing” model under which the firm will not act as a fiduciary and will receive level compensation until such time as the fund menu is modified. These programs will be addressed with impacted partners directly.

**Q. What is required for a fund family to be traded on the BPAS platform, and does BPAS receive any type of compensation or remuneration for making funds available?**

A. BPAS operates a true open-architecture platform of DC plan investments. We are currently trading approximately 3,500 individual tickers, from over 330 fund families, with a theoretically available universe of some 25,000 cusips in total (counting *all funds* managed by this universe of fund families). BPAS has specific operational rules for funds to be included on our platform (e.g., funds must be traded through NSCC, operate with same day / late day trading, trade free of front- or back-end loads or transaction fees, must submit prices reliably and on time, contract under reasonable terms, etc.). However, we do not charge a fee either to plans, financial intermediaries, or fund families for being included on our platform, nor will we accept any kind of compensation from fund families for the same (aside from ordinary forms of revenue sharing, which are used in the fee offset process described above). While some other clearing firms and platforms have annual fees for being listed on their platform, or may impose minimum asset requirements or “revenue sharing hold back” rules, we apply 100% of the revenue sharing paid by funds in the fee offset process, as outlined above. We also give clients full credit for the revenue sharing each month, even if it has not yet been received from fund families for timing reasons (e.g., some funds pay

quarterly). This credit ensures the fee process is fair and level each month despite different payment frequencies from various funds and share classes.

Because we incur legal and operational costs when adding funds or new fund families to our platform, BPAS will only add funds when they have been requested for an actual plan (not pre-emptively on the chance a fund might be used in the future). And, since we are already trading so many funds, we ask clients to review our list of traded funds *before* asking us to add new funds to the platform. The objectivity and flexibility of the BPAS open architecture platform is something clients find truly refreshing – particularly in an industry where there are so many “conflicted” service providers and those who use proprietary funds or “fund menu based pricing” as part of their model. **We do not manage proprietary funds or have proprietary fund requirements, nor do we attempt to influence the fund selection process toward any fund or fund family.** We let the fiduciary process (as managed by the 500+ financial intermediaries with whom we do business) and the preferences of plan sponsors drive the selection and utilization of funds across our platform.

**Q. What changes do you anticipate to your Administrative Services Agreement (existing agreement or the agreement used for new clients)? What amendments to the existing contract will clients need to agree to? Are you requiring a new contract or re-papering client agreements?**

A. The vast majority of our clients *already have* an updated Administrative Services Agreement (ASA) in effect with BPAS, and will not need to sign a new one as a result of this new Regulation. A small number of plans may have an ASA that is outdated and needs to be updated. We also have a subset of plans that were contracted with the financial intermediary partner previously (where BPAS was a subcontractor to that firm). In most cases, these firms are moving away from that model in the new paradigm and will ask BPAS to contract for its services directly with plan sponsors. We will reach out directly to any clients that will need a new ASA with us,

**Q. Will clients need to sign a new fee page?**

For most clients, the existing fee page on file is fine and will not need to be updated for the new Regulation. For a small subset of clients, we may need to update the signed fee page (e.g., a financial intermediary updated its fee arrangement, moved from tiers to a flat basis points approach, movement to joint normalization, etc.). Our ASA allows fee arrangements to be updated *prospectively* without a new client signature, provided that the client is notified of the change in writing at least 60 days before the effective date of the change. When fee pages are updated, they will be communicated to the plan sponsor in writing, along with supporting information about the new Regulation and the approach BPAS is taking to comply. As a general rule, fee pages will not need to be signed by clients and provided back to BPAS – merely retained on file regarding their plan.

**Q. Describe the changes the new Regulation will make to the call center? Will there be new call center protocols implemented (rollovers, distributions and general advice)? If so, can you provide us with a copy of the call center protocols / scripts?**

A. We are updating scripts, training materials, and the overall instructions given to our Customer Service team to dovetail with changes from the new Regulation. BPAS has always worked to assist participants through *information* and *education* -- not providing investment advice directly; this posture will continue. However, special care will be made in participant calls concerning incoming and outgoing rollovers, to not sway or influence that decision for participants. We will provide articles that participants can read outlining the various considerations, and stress that the participant should make a determination

considering fees, investments, fiduciary services, and other factors. We are also working on a suite of financial wellness materials that will be included in our participant website, augmenting our current Participant Education Center. When participants ask for help with an incoming or outgoing rollover, we will be pleased to assist in the process, but we will not take a position of advocacy, one way or another. As before, calls to our Customer Service team will be recorded and archived; our management team will review calls and provide ongoing training to the Customer Service team to ensure compliance with this issue.

**Q. What changes will be made to your enrollment materials, slide deck presentations, online resources, group meetings and / or in-person meetings?**

A. We are currently reviewing all participant education materials for compliance. This review addresses the provision of information and not “hard advice.” While there are certain topics that will continue to be emphasized (e.g., the advantages of tax-favored retirement plans, dollar cost averaging, general retirement education, and more), we will make sure that the materials remain fully objective and not recommend any particular course of action (including the incoming or outgoing rollover question, consolidating assets, etc.). Participants will need to perform an assessment of services, fees, and value to determine which financial service firms they work with for their array of accounts.

**Q. Describe the impact of the new Regulation on participant advice services your firm will be making available to clients.**

A. For a variety of reasons, BPAS made a decision several years ago not to provide participant advice services internally. Our view is that there are simply *too many conflicts* that can arise when a provider delivers this service internally (e.g., proprietary versus outside funds, un-level compensation, etc.). Personal financial planning matters often become complex quickly, which is another area where Registered Investment Advisors, Corporate Trustees, and Certified Financial Planners solve vital needs. Many of our financial intermediary partners provide such services as part of their value proposition. However, in situations where a plan sponsor *wants* to offer investment advice and the financial intermediary doesn’t wish to offer it internally, we have created certain partnerships which can be made available to the client. In these cases, BPAS has decided that we will receive no compensation from the advice provider, plan sponsor or participant associated with the service – it will merely be a relationship between a third-party advice provider and the plan sponsor. However, BPAS will perform the advance work to make this partnership possible and ensure that contracts, information exchange, and other vital considerations are properly covered.

**Q. Will there be any additional services offered involving fiduciary services?**

A. Through our BPAS Fiduciary Services team, we already offer plan-level fiduciary services to financial intermediary partners and plan sponsors in need of such services. While most clients use the 3(38) program, certain larger plans use our 3(21) approach. This service is offered as a support service to financial intermediary partners – some who have decided to capitalize on the BPAS process rather than build their own program internally. As always, our process is conducted in a 100% objective manner, with no partiality based on revenue sharing, using fee normalization, and per the terms of a documented Investment Policy Statement. Therefore, any fiduciary services we offer are already in full compliance with the new Regulation.

**Q. When will various steps be implemented by BPAS?**

- A. There is still some uncertainty about the new Regulation, the 180-day delay and any possible changes that may be made as a result of a public comment period. However, BPAS is proceeding as outlined above, under the assumption that the Regulation as stated now is the best blueprint to work with. We will continue to monitor for any changes from the DOL and adjust accordingly.

\* \* \* \* \*

This memo outlines the approach BPAS is taking to comply with the new DOL Fiduciary Regulation. It will be posted in the plan sponsor bulletin board of [www.bpas.com](http://www.bpas.com) and made available to clients and partners. We may publish additional updates as warranted based on future events or any changes made by the DOL. If you have any questions, please contact your BPAS Sales Team representative.