

## The Fundamentals of the DOL Fiduciary Rule Implementation June 9, 2017 – December 31, 2107

Effective June 9, 2017, the Fiduciary Rule will apply to recommendations, made for a fee which includes insurance commissions and other forms of compensation, to ERISA Plans; plan participants and beneficiaries and IRA Owners. Recommendations of annuities, insurance products and investments that were sales activities in the past are now to be treated as fiduciary advice. Therefore, you now have specific Fiduciary Duties that apply under the DOL Fiduciary Rule.

Specifically, producers/advisors are giving Fiduciary advice if they:

- Recommend rolling retirement plan benefits over to IRA's including annuities;
- Recommend transferring existing IRA's from other institutions;
- Recommend taking or changing distributions from retirement plans or IRA's to purchase annuities or life insurance with the proceeds. An example would be to recommend using an upcoming RMD to buy a life insurance policy for estate planning purposes; and
- Recommend purchasing annuities or other investments within IRAs.

The Fiduciary Process Necessary to Comply:

1. Make a Best Interest Recommendation: In order to make a Best Interest Recommendation, a producer must employ a thorough, prudent and well documented process that takes into account all relevant factors regarding the recommendation and the clients need. NOTE – Documentation of the information collected and basis for the recommendation is essential to demonstrate compliance.
2. Meet the Impartial Conduct Standards: In order to meet the Impartial conduct Standards the producer must show:
  - a. A recommendation is in the best interest of the Client – well documented
  - b. No more than reasonable compensation is being paid – this is typically measured by comparison to industry standards in light of the services provided.
  - c. No material misleading statements were made at the time of the recommendation. All statements to the client about products, material conflicts of interest (compensation and incentives), fees and other relevant matters must not be materially misleading.
3. Complete the Prohibited Transaction Exemption (PTE) 84-24 form with accurate disclosures with respect to compensation – it must also be reasonable compensation. The PTE 84-24 should include disclosures specific to the Impartial Conduct Standards. The other Exemption is the Best Interest Contract Exemption. The only requirement is to demonstrate that the producer has met the Impartial Conduct Standards which will be outlined. However, the BIC must be signed by a qualified Financial Institution and the client. All insurance company products fall under the 84-24 Exemption and require producer only compensation disclosure for the current period of June 9 – December 31, 2017. Therefore, most producers/advisors will use that exemption and not the BIC which requires a Financial Institution to sign.

Please note that the DOL has said that will not be enforcing the Fiduciary Rule nor imposing penalties provided that producers/advisors are acting in good faith in executing their duties. However, they can't protect the producers from litigation which the rule allows. Therefore, documentation is critical!



## DOL Fiduciary Rule Checklist for June 9, 2017 – December 31, 2017

- \_\_\_\_\_ Does your recommendation include the use of qualified monies from a retirement plan or IRA?
- \_\_\_\_\_ Have you documented and analyzed all relevant information about your client e.g. Know Your Customer Material?
- \_\_\_\_\_ Have you documented your recommendation so as to demonstrate it is in the best interest of your client considering the current source of funds, it's components, and the advantages of the recommended actions?
- \_\_\_\_\_ Have you disclosed your compensation and demonstrated it is reasonable compensation?
- \_\_\_\_\_ Do you have a compensation schedule that shows all your compensation is within normal and reasonable ranges for all of the carriers you represent or have access to?
- \_\_\_\_\_ Have you validated and produced appropriate information about your product recommendation to demonstrate you have made no misleading statements?
- \_\_\_\_\_ Have you disclosed any material conflict of interest – these may be incentives, fees or a special affiliation with a carrier?
- \_\_\_\_\_ Do you have the PTE 84-24 completed and signed by both you and the client and retained in the file?
- \_\_\_\_\_ Are all applications, suitability forms and illustrations reviewed and signed with copies retained for the file?
- \_\_\_\_\_ If you are using the Best Interest Contract Exemption (BIC), has it been completed and signed by the appropriate Financial Institution?

