

Producers and PTE 84-24

November 15, 2021

Background

In February 2021 the Department of Labor (DOL) finalized Prohibited Transaction Exemption 2020-02 (PTE 2020-02), which includes their new interpretation of the 5-part test established in the original 1975 regulation. This regulation defines who is an investment advice fiduciary under the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975 of the Internal Revenue Code (the code). This revised interpretation creates risk that insurance producers may be considered fiduciaries under ERISA and the Code when providing advice to (1) retirement plan participants about to roll over plan assets to an IRA, and (2) IRA owners about how to invest in their IRAs. Classification as a fiduciary impacts a producer's ability to collect compensation during these transactions unless they can satisfy one of DOL's available prohibited transaction exemptions.

While many of these types of plan-IRA transactions may not create a fiduciary relationship, producers may want to fit within a prohibited transaction exemption to protect themselves and their compensation in the event they are deemed a fiduciary. For sales of annuities, applicable exemptions are PTE 2020-02 and PTE 84-24.

Though PTE 2020-02 may be useful for some situations, Athene will not be utilizing it at this time and will not be serving as a supervising financial institution for purposes of the exemption. Instead, Athene will be using PTE 84-24.

What is PTE 84-24?

PTE 84-24 is a DOL class exemption that provides protection from prohibited transaction rules for ERISA/IRA transactions when commissions are collected in connection with the purchase of an annuity. Among other conditions that must be satisfied to obtain the relief granted by PTE 84-24, producers are required to provide their clients with certain disclosures in writing before a sale, including a compensation disclosure. The client must acknowledge (sign) the written disclosure and approve the transaction.

How Is Athene Helping Ensure PTE 84-24 Requirements Are Met?

To assist producers in complying with PTE 84-24, Athene has developed the following materials:

84-24 Disclosure Form (Form 25198): Producers may use Athene's 84-24 Disclosure Form, available now on the Forms and Materials page, in connection with sales of annuities involving qualified funds. You are not required to use Athene's form and may use a different version of the required disclosure to comply

with PTE 84.24. While you will not be required to send the disclosure form to Athene, we will file the form in the client's contract file on your behalf if you do.

Note: PTE 84-24 requires disclosure of compensation earned by each sale. You will need to include your compensation for the sale in the appropriate spot on the form at the time of application. The disclosure must be signed by the producer and client, and a copy must be left with the client. A copy of the written disclosure must also be kept in your personal files for each client, including those that do not accept your recommendation.

PTE 84-24 FAQ (Form 25199): Athene has also developed a Frequently Asked Questions (FAQ) document to help producers assess their status as a fiduciary under DOL's revised interpretation of the 5-part test. The FAQ will also provide general guidance for compliance with PTE 84-24. For additional guidance, or specific questions regarding a producer's sales practice, producers are encouraged to consult with their sales organization or legal advisor.

What About Using PTE 2020-02?

PTE 2020-02 provides a new class exemption that allows persons who are categorized as "fiduciaries" under ERISA and the federal tax code to be paid a commission for selling products or services to qualified plan participants and IRA owners, including rollover transactions. The new PTE is generally available for insurance companies, brokers, and producers, among other financial professionals and institutions. It is not available to insurance intermediaries, such as IMOs, FMOs, and BGAs. As mentioned above, at this time, Athene will not be utilizing the exemption and will not be serving as a supervising financial institution for purposes of the exemption. However, a producer's sales organization may intend to utilize PTE 2020-02. Producers should check with their back office for guidelines.

What other resources are available to assist Producers?

In April 2021, the DOL issued their own FAQs for PTE 2020-02 which covers their revised interpretation of the 5-part test. The FAQs also provide clarifications of PTE 2020-02, as well as information about effective dates and a discussion of how they plan to enforce compliance with PTE 2020.02.

Alongside the FAQs, the DOL released a consumer guide to help retirement investors better understand their rights and the role of investment advisors.

Will the DOL take further action on the Fiduciary Rule or PTE 84-24?

In their answer to Question 5 of the FAQ, the DOL notes that they are reviewing issues of fact, law, and policy related to PTE 2020-02, and more generally, its regulation of fiduciary investment advice. The DOL also indicated that they anticipate taking further regulatory actions, including amending the investment advice fiduciary regulation, amending PTE 2020-02, and amending or revoking some of the other

existing class exemptions such as PTE 84-24. In June 2021, the DOL formally announced its intent to propose a “major” rule that is “economically significant” to modify the definition of fiduciary investment advice. The target date for release is December 2021. Athene will continue to monitor the situation and provide additional guidance as more information becomes available.

What else is Athene is doing?

Athene is actively engaged in industry conversations industry regarding the DOL’s announced plans, PTE 2020-02, and the use of PTE 84-24. Through industry groups, we proactively engage with the DOL about changes to the present regulatory structure. As we know more, Athene expects to provide additional information to our producers.

Thank you for your business. At Athene, we’re committed to helping take you to the next level.