

COMPLIANCE Bulletin

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TO: All Agents
FROM: Gina Byrne Miller, Compliance Officer
SUBJECT: PTE 84-24

This Compliance Bulletin is being provided to you for informational purposes only. It is meant to be a high-level summary of recently adopted requirements issued by the Department of Labor ("DOL"). The responsibility for determining if you can be permissibly compensated per DOL guidance in a transaction as discussed below in this bulletin is yours alone.

Under rules promulgated by the DOL, if fiduciary investment advice is provided by a producer to a customer with respect to the purchase of insurance in a transaction involving qualified funds, a DOL exemption or Prohibited Transaction Exemption ("PTE") could be necessary for the producer to permissibly receive any compensation related directly or indirectly to the sales transaction. Ignoring the requirement to use an exemption when acting as a fiduciary in a sales transaction can result in the assessment of significant penalties by the DOL and/or IRS.

There is a five factor test to determine whether the producer intends to provide to a customer "fiduciary investment advice" as defined by the DOL. In a transaction involving qualified funds, the five factors are:

- (1) the producer renders advice to a customer as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property
- (2) on a regular basis (or plans to continue to provide information or advice to the customer on a regular basis)
- (3) pursuant to a mutual understanding
- (4) that such advice will be a primary basis for the customer's investment decisions, and that
- (5) the advice will be individualized to the customer.



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If each of these five factors is met, you are a fiduciary under the DOL rules and may not permissibly collect compensation for the transaction unless you have qualified for an exemption.

PTE 84-24 allows producers who may be acting in a fiduciary capacity as described above in a transaction involving qualified funds to permissibly receive compensation for that transaction.

The requirements of the exemption are:

- (a) The sale is on terms at least as favorable as an arms-length transaction with a third party.
- (b) Total fees, commissions, and other payments to the producer and insurance company is reasonable compensation when compared with other products in the marketplace with similar features.
- (c) The following information is accurately provided in writing, in a manner intended to be understood by people who are not experts in insurance or annuity products prior to application for the product:
 - i. Any affiliation between the producer and the insurance company.
 - ii. The sales commissions expressed as a percentage of first year premium as well as any trailing or renewal commissions or fees.
 - iii. A description of the charges, fees, discounts, penalties or adjustments which can be imposed against assets in the contract.
 - iv. Acknowledgement that the customer is not receiving any direct compensation from the purchase or holding of the product and is not affiliated or related to parties who are receiving such compensation.
 - v. Acknowledgement by the customer of receiving the information described in this section (c).
- (d) Authorization by the customer, for the purchase to proceed.

The disclosures, acknowledgements, and any documents provided to the customer as part of the transaction at issue must be retained by the producer for a period of no less than six years from the date of execution.

This bulletin does not address every situation that could arise or attempt to discuss every potential interpretation of either this exemption or fiduciary duties in general. This bulletin is not legal advice. Laws and regulatory standards can change. Please contact your own attorney for legal advice. PTE 84-24 only provides an exemption to permissibly collect compensation if certain conditions are met and does not address any duties you may have with regard to the transaction, fiduciary or otherwise. National Western Life completely disclaims any liability for misinterpretation or misapplication of this material. National Western Life has no obligation to update this bulletin. This bulletin is not meant for consumer use.



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