W&S Financial Group Distributors
A member of Western & Southern Financial Group

DOL Announces Changes to Fiduciary Rule

The Department of Labor (DOL) recently updated their Fiduciary Rule to include a new prohibited transaction exemption (PTE) related to certain investment and rollover recommendations. The DOL also expanded its interpretation of the existing 5-part test to determine when an individual is an ERISA fiduciary. The updated rule (including the new PTE and the expanded interpretation) became effective on February 16, 2021 with compliance required by January 31, 2022.

These changes to the DOL Fiduciary Rule impact insurance producers; **ERISA fiduciary status may be triggered more easily under the DOL's reinterpretation of the 5-part test.** The 5-part test will determine if you are an ERISA fiduciary:

1. You render advice about plan assets (401(k), 403(b), IRA, etc.);
2. On a regular basis;
3. Pursuant to a mutual agreement;
4. The advice serves as a primary basis for investment decisions; and
5. The advice is individualized.

The DOL's new interpretation makes fiduciary status more likely, especially for rollover recommendations. The new interpretation includes:

1. Providing a rollover recommendation meets the "render advice" prong (#1 above);
2. Statements disclaiming a mutual agreement do not control;
3. Statements forbidding reliance will not control; and
4. All facts and circumstances will be considered, and marketing materials that indicate that you are a trusted adviser or want an ongoing relationship with clients will be viewed as more likely to meet the 5-part test.

If a producer is an ERISA fiduciary, he/she cannot receive compensation related to that investment advice unless he/she complies with the requirements of a PTE. Notably, an existing PTE–PTE 84-24–is still available for producer use to receive compensation for investment advice. The general conditions of PTE 84-24 include:

1. That a recommendation is made in the ordinary cause of business and is as favorable as an arm's length transaction with an unrelated party would be;
2. The combined total of all fees, commissions, etc. received by the producer must not be in excess of "reasonable compensation"; and
3. The producer may not have certain relationships with the plan or IRA including acting as a trustee, or administrator to the plan or employer.

PTE 84-24 also requires that a producer disclose:

1. The nature of any affiliation or relationship with the insurance company whose contract is being recommended, and any limitations on the products that can be recommended;
2. The sales commission, expressed as a percentage of gross annual premium payments; and
3. Any charges, fees, discounts, penalties or adjustments under the annuity contract.

To assist you with meeting the requirements of PTE 84-24, W&S Financial Group Distributors, Inc. has made available a product catalog and related applicable disclosure templates for your use. We will provide more detail regarding these tools in the coming weeks, including specific references to these tools on our producer sites. Thank you for your continued partnership.

For assistance with these items, please contact the Sales Desk at salessupport@wsfinancialgroup.com or call:

800.804.4465

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CF-46-33000-31-2112 - IA