Department of Labor (DOL) Fiduciary Rule and Impartial Conduct Standards

Introduction

Course Overview

Beginning February 16, 2021, the provisions of the DOL's new Fiduciary Rule became effective, including the expanded definition of fiduciary and Impartial Conduct Standards under new and amended prohibited transaction exemptions. The DOL provided a non-enforcement grace period that will expire on February 1, 2022.

This Rule represents the most significant change to retirement investment services since the enactment of Employee Retirement Income Security Act (ERISA) and will have a profound impact on how financial institutions and professionals provide services to retail retirement investors, including IRAs and IRA owners. This course provides an overview of the DOL's Fiduciary Rule and the responsibilities under the Rule.

Overview

Fiduciary Status

The DOL's Fiduciary Rule prevents parties providing fiduciary investment advice from collecting compensation or other payments for such advice unless they comply with an exemption to the rule, called Prohibited Transaction Exemption ("PTE").

- A person is considered to be giving fiduciary investment advice if they:
    1. Make **recommendations** as to the **advisability** of investing in, purchasing, or selling securities or other property;
    2. On a **regular basis;**
    3. Pursuant to a **mutual agreement, arrangement or understanding, written or otherwise** with the plan owner, plan fiduciary or IRA owner, that ;
    4. The advice will serve as a **primary basis** for the investment decisions with respect to the plan or IRA assets, and that;
    5. The advice will be **individualized** based on the particular needs of the plan or IRA.

For agents to avoid fiduciary status, agents should clearly communicate that they are **NOT** fiduciaries and ensure that their **actions are consistent** with those statements. Agents **must** maintain all records regarding fiduciary status and transactions involving fiduciary investment advice for a minimum of **6 years**.

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Prohibited Transactions Exemptions

To minimize the impact of the Rule on firms and advisors not previously subject to a fiduciary standard and allow them to continue to receive certain traditional forms of variable compensation, the DOL created a new Prohibited Transaction Exemption (PTE) 2020-02 and amended certain other existing exemptions, including PTE 84-24.

Under these exemptions, firms and advisors may continue to receive a variety of common forms of variable compensation and engage in certain other transactions that would otherwise be prohibited, provided they act in the best interest of the client, adhere to the Rule's Impartial Conduct Standards, and meet other currently applicable requirements of the exemption being used.

Overview

The Fiduciary Rule and Insurance Companies

The DOL's new Fiduciary Rule has the potential to apply to any business written with qualified funds (such as a qualified plan rollover to an IRA or the purchase of a life insurance policy funded with Required Minimum Distributions).

American National does not intend to become a fiduciary as a result of qualified sales and will rely on the PTE 84-24. As such, we will be utilizing and expect agents selling American National products to be utilizing PTE 84-24.

Overview

PTE 84-24

PTE 84-24 allows agents to receive commissions for a sale of an insurance product (including life insurance and variable, fixed indexed and fixed rate annuities) as long as:

- The total compensation received by the agent and agent's agency is reasonable,
- The transaction is performed in the ordinary course of business,
- The transaction is at least as favorable as an arm's length transaction with an unrelated party, and
- The agent discloses the following in advance of the sale, and receives the customer's acknowledgement, in writing, of such disclosures:
    1. The agent's **relationship** with the insurance company, and any limitations;
    2. The **Agent's commission** (as a percentage of gross annual premium payments);
    3. A description of the **charges and fees;**
    4. Any other **conflicts of interest**.

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Effective February 1, 2022

- American National will begin requiring agents to complete the "Insurance Agent (Producer) Disclosure" Form (insert link to form) and submit with new qualified sales.
- Insurance agents, brokers, and consultants using PTE 84-24 for annuity recommendations must comply with the Impartial Conduct Standards in addition to other currently applicable requirements.
- Impartial Conduct Standards requirements:
  1. The advice the agent gives must be in the "best interest" of the retirement investor. This best interest standard has two chief components: Prudence and Loyalty:
     a. Under the Prudence standard, the advice must meet a professional standard of care, and
     b. Under the Loyalty standard, the advice must be based on the interests of the customer, rather than the competing financial interest of the agent or firm;
  2. Only reasonable compensation can be charged or received by the agent or agent's agency; and;
  3. The agent may not make any misleading statements about investment transactions or products, compensation, or any conflicts of interest.

Questions from Client on Fiduciary Status

What should you do if a clients asks if you are a fiduciary?

- If a client asks whether or not you are a fiduciary, refer back to the FAQ communication that was distributed in December.
- If a client asks specifically for a written statement about your fiduciary status, provide them with a copy of the "Fiduciary Status Disclosure" Form which was included in the FAQ and can be found here. **You should only provide this form if specifically asked for this information. It is NOT a requirement with each sale.**

IMPORTANT: Neither American National nor an agent selling an American National product with qualified money should act as a fiduciary.