

DOL FIDUCIARY RULE 4.0 TOP 10 TAKEAWAYS FOR INDEPENDENT INSURANCE PRODUCERS

APPLICABILITY OF PTE 84-24

On April 23, 2024, the Department of Labor published its “Retirement Security Rule” (fiduciary rule 4.0) and significant amendments to related prohibited transaction exemptions (PTEs). As part of NAFA’s commitment to help educate members about regulatory changes impacting financial advice, we’ve put together a concise summary of the top 10 takeaways for independent insurance producers regarding the Rule and what it means for annuity sales.

- 1. WHAT THE RULE IS:** DOL has redefined who is an investment advice fiduciary under ERISA and the Internal Revenue Code in connection with making certain investment or product recommendations to Retirement Investors, which includes workplace retirement plan participants, IRA owners, and/or beneficiaries. The new definition jettisons the 1975 five-part test and replaces it with a much more expansive test, capturing even one-time rollover recommendations as fiduciary in nature. If compensation is received as a result of that advice or recommendation, the transaction is considered conflicted and is prohibited; accordingly, compliance with a PTE is required in order to receive permissible compensation. PTE 84-24 has been amended for use only by Independent Producers who provide fiduciary investment advice and who receive compensation for the sale of an annuity or other insurance product that is not considered a security under federal securities laws.
- 2. EFFECTIVE DATE AND PHASE-IN PERIOD:** The rule takes effect Sept. 23, 2024, applicable to transactions occurring on or after that date, although some conditions of the PTEs are not effective until Sept. 23, 2025. During the phase-in year, Independent Producers must comply with the requirements of the Impartial Conduct Standards and must provide written acknowledgment of fiduciary status in order to get exemptive relief under PTE 84-24 and receive compensation. All other conditions of the exemption — additional written disclosures and documentation requirements, as well as the conditions and obligations for insurers — go into effect Sept. 23, 2025. (No party will be held to the conditions under amended PTE 84-24 for transactions occurring prior to Sept. 23, 2024. If a party is receiving ongoing compensation for a transaction occurring prior to that date (e.g., a trailing commission), the amended PTE 84-24 would only apply if and when new fiduciary investment advice is provided.)
- 3. BECOMING AN INVESTMENT ADVICE FIDUCIARY:** Under the new test, investment or product recommendations to purchase an annuity using assets from an IRA or workplace retirement plan, including a one-time rollover recommendation, trigger fiduciary status if the recommendation is based on a review of the Retirement Investor’s particular needs or individual circumstances; is made with professional judgment; and may be relied upon by the Retirement Investor to advance his or her best interest.

- 4. WHO IS AN INDEPENDENT PRODUCER:** An Independent Producer is someone who is licensed under the laws of a state to sell, solicit, or negotiate insurance contracts and annuities and who sells to Retirement Investors the products of two or more unaffiliated insurance companies. The definition includes statutory employees of an insurance company where the company has no financial interest in the covered transaction. Other insurance professionals — including captive agents, statutory employees selling products of their statutory employer insurer, and independent agents who sell only one insurance company’s products — would not be considered an Independent Producer and would need to use PTE 2020-02. Individuals who hold both a securities license and an insurance license may rely on PTE 84-24 as long as they satisfy the other conditions and requirements of the exemption. It is not necessary for Independent Producers who are insurance-licensed only to obtain a securities license in order to use PTE 84-24.
- 5. THE IMPARTIAL CONDUCT STANDARDS:** Beginning Sept. 23, 2024, Independent Producers who provide fiduciary investment advice must provide a written acknowledgment to the Retirement Investor that they are making a recommendation in a fiduciary capacity under ERISA or the Code. The acknowledgment must be “unambiguously clear;” anything short of definitive fiduciary acknowledgment will fail the exemption condition. Accordingly, DOL states it would not be sufficient to use language such as “to the extent that the recommendation may be treated as a fiduciary recommendation ...” or to alert the Retirement Investor that there “may or may not be fiduciary obligations” in connection with the recommendation.
- 6. DISCLOSURE OF FIDUCIARY STATUS:** Beginning Sept. 23, 2024, Independent Producers who provide fiduciary investment advice must provide a written acknowledgment to the Retirement Investor that they are making a recommendation in a fiduciary capacity under ERISA or the Code. The acknowledgment must be “unambiguously clear;” anything short of definitive fiduciary acknowledgment will fail the exemption condition. Accordingly, DOL states it would not be sufficient to use language such as “to the extent that the recommendation may be treated as a fiduciary recommendation ...” or to alert the Retirement Investor that there “may or may not be fiduciary obligations” in connection with the recommendation.
- 7. PTE 84-24 CONDITIONS & REQUIREMENTS AS OF SEPT. 23, 2025:** For fiduciary transactions occurring on or after Sept. 23, 2025, in addition to the adherence to the Impartial Conduct Standards and the written fiduciary acknowledgment previously discussed, Independent Producers will be required to provide a number of additional written disclosures to the Retirement Investor, including a statement of the Care and Loyalty obligations; all material facts relating to the scope and terms of the relationship with the Retirement Investor (including fees and costs related to the transaction, a notice of the right to request additional information regarding cash compensation, and the type and scope of services the Independent Producer may provide to the Retirement Investor¹), and all material facts related to the conflicts of interest associated with the recommendation. In addition, prior to making the rollover recommendation, the Independent Producer must consider and document the basis for the determination to recommend the

¹ This must include the types of products the Independent Producer is licensed and authorized to sell, any limitations on the range of products that may be recommended, and the identification of the specific Insurers and specific insurance products available to the Independent Producer for recommendation.

annuity and must provide that to the Retirement Investor and the issuing Insurer. There are additional disclosures required for ERISA plan to IRA rollover recommendations as it relates to the basis for the recommendation, including the consideration of alternatives to the rollover — including leaving money in the Plan, the fees associated with the plan as compared to the recommended annuity, whether the plan participant or other party pays for some or all of the administrative expenses, and the different levels of fiduciary protection, services, and investments available.

- 8. INSURANCE PRODUCTS APPLICABLE UNDER PTE 84-24:** Insurance products that do not have an investment component, such as term life insurance for example, are not subject to the Rule and would not require the use of a PTE. Fixed and fixed indexed annuities, whole life policies, universal life policies, and other insurance products with investment elements are subject to the Rule. Fiduciary transactions involving variable annuities are not eligible under PTE 84-24 but can be sold under PTE 2020-02.
- 9. PERMISSIBLE COMPENSATION:** If an Independent Producer provides fiduciary advice or makes a fiduciary recommendation that results in the receipt of cash and/or non-cash compensation, PTE 84-24 provides a compliance pathway for the Independent Producer to receive that compensation. As long as the compensation is not unreasonable, compensation of all types and from all sources are eligible for relief. Under this exemption, cash and non-cash compensation may be paid to an IMO, which may then compensate the Individual Producer who has provided the investment advice. While “unreasonable compensation” is not explicitly defined, it is a facts and circumstances determination based upon prevailing market conditions: compensation should not be excessive as measured by the market value of the particular products and services being delivered to the Retirement Investor.
- 10. CORRECTING ERRORS OR OMISSIONS – ELIGIBILITY:** Errors or omissions in disclosing the required information may be corrected by disclosing the required information as soon as practicable but not later than 30 days after the date on which the error or omission was discovered or reasonably should have been discovered. Violations of the exemption’s conditions may be self-corrected, provided that the Independent Producer or issuing Insurer has refunded any charge to the Retirement Investor no later than 90 days after learning of the violation. (The Insurer may also rescind or cancel the contract and waive any surrender charges.) Violations that are not corrected, along with other types of misconduct, including a pattern on noncompliance or convictions for certain state or federal criminal offenses, will result in a 10-year prohibition against reliance on the exemption.