NFI SOLUTIONS
NATIONAL FINANCIAL INC.

FINANCIAL PROFESSIONAL GUIDE

Understanding and Implementing the New Fiduciary Rule

FEBRUARY 2021

How to Determine if You are Acting in a Fiduciary Capacity with a Transaction

Understanding and Implementing the New Fiduciary Rule

In light of the recent Department of Labor (DOL) regulation, which is being referred to as the new Fiduciary Rule[1], NFI Solutions has put together this guide to help you understand the specifics and what to consider when providing financial guidance to your prospects and clients.

What is the Fiduciary Rule?

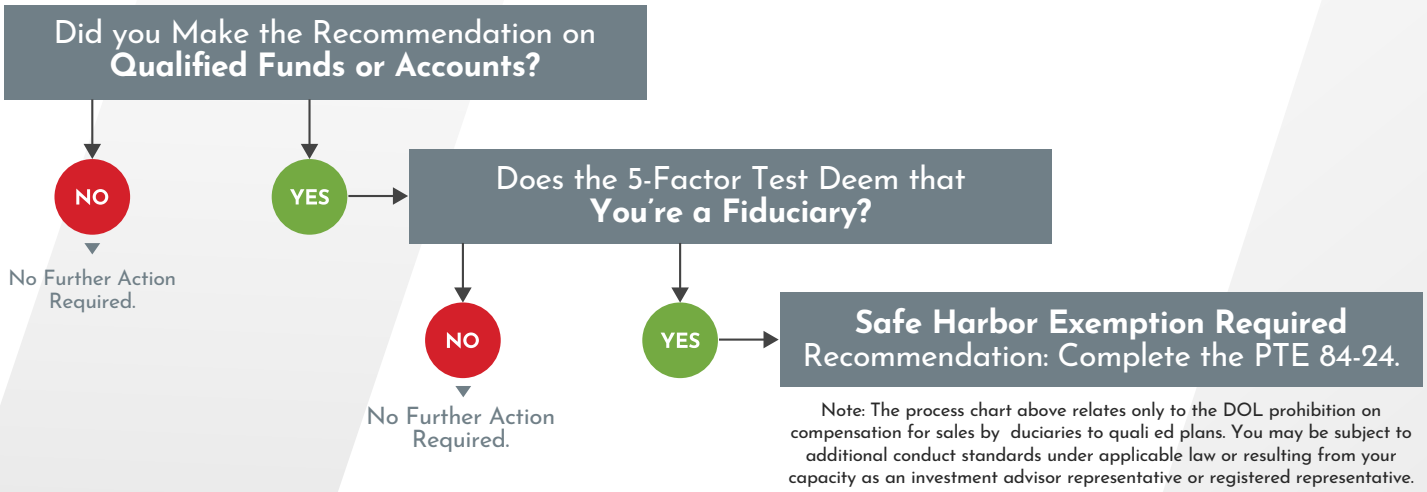
This rule speaks directly to "qualified assets". If you as an agent and/or advisor are deemed a "fiduciary" for the transaction, then the DOL prohibits you from receiving compensation for providing advice as it relates to qualified assets, unless you qualify for an applicable "safe harbor". The Fiduciary Rule created a new "safe harbor" and clarified the DOL's interpretation of when fiduciary status applies.

How to Determine if You are Acting in a Fiduciary Capacity with a Transaction

The DOL has provided what is being called a "five-factor test" that if confirmed, deems that you are acting in a fiduciary capacity (all five statements must apply):

01. You provided advice as to the value of securities/property, or made recommendations as to the advisability of investing in, purchasing, or selling securities or other property;
02. You provided advice on a regular basis;
03. The advice you provided was made pursuant to a mutual agreement, arrangement, or understanding with the plan, plan fiduciary or IRA owner;
04. The advice you provided will serve as a primary basis for investment decisions with respect to plan or IRA asset; and
05. The advice was individualized based on the particular needs of the plan or IRA account.

Overview of Implementing the DOL Rule per Transaction



[1]Prohibited Transaction Exemption 2020-02 - the "Fiduciary Rule".

Safe Harbor Exemption

In order for an agent and/or advisor to receive compensation for advice related to qualified assets, the proper "safe harbor" disclosure and documentation requirements must be met. The PTE 84-24 form is one of those options and will most likely be utilized by fiduciaries advising on qualified assets until the uncertainty is resolved around the new DOL Rule.

See attachment for PTE 84-24 that can be used with your clients.

Examples of DOL Rule in Practice

The following are examples of the DOL Rule put into practice. Please consult your compliance officer for questions pertaining to your specific situation.

Rollover to a Fixed or Fixed Index Annuity

If you are recommending that a prospect or client roll over his or her qualified account to a fixed or fixed index annuity, you should evaluate the "five-factor test" to determine if you are acting in a fiduciary capacity.

Annual Review of Fixed or Fixed Index Annuity

If you are planning to establish an ongoing relationship with your prospect or client and will be advising around annual allocation changes, then you should evaluate the "five-factor test" to determine if you are acting in a fiduciary capacity.

Life Insurance Premiums Paid from RMDs

If you are recommending that the prospect or client take his or her RMDs from a personal qualified account and use them to pay for life insurance premium, you should evaluate the "five-factor test" to determine if you are acting in a fiduciary capacity.

What is Next?

The DOL Rule is meant to be aligned with NAIC and SEC Best Interest Regulations, which means that clarification is imminent. The next key date as it relates to this new Fiduciary Rule is December 20, 2021. It is most likely that the form PTE 84-24 will be the standard for covering transactions that meet the new Fiduciary Rule.

For more information about the new Fiduciary Rule,

CLICK HERE

info@NFIsolutions.com.

PTE 84-24 Disclosure and Acknowledgment Form

Name of Individual Agent or Broker ("Agent") licensed to sell tax-qualified annuities/life insurance:

_____

Name of Proposed IRA / Plan Owner ("You"):

_____

This Disclosure and Acknowledgment Form ("Form") provides important information You should know before making a purchase of, and additional payment(s) to, an annuity life insurance contract issued by the Insurance Company ("Insurance Company") with IRA or employee benefit plan funds. This Form is provided pursuant to applicable law, and in particular, ERISA Prohibited Transaction Exemption 84-24.

Relationship of Agent to Insurance Company

You will be purchasing Your annuity/life insurance contract through the Agent who is independent of the Insurance Company and has no contractual obligation to recommend Insurance Company's annuities/life insurance contracts. Agent can recommend annuity/life insurance contracts that are issued by Insurance Company as well as other insurance companies.

Commissions Payable to Agent

The Insurance Company will pay Commissions to the Agent when You purchase this annuity/life insurance contract. In addition, Insurance Company may pay additional amounts to a managing agent, supervising agent, or other third parties that are involved in the marketing, training, administration, wholesaling, supervisions, or issuance of the annuities/life insurance contract. These parties may also allocate a portion of such amounts to the Agent. The Commission is paid by the Insurance Company and one hundred percent of Your premium payment will be credited to the accumulation value of Your annuity/life insurance contract. Below is a description of the Commissions the Agent will receive when You purchase this annuity/life insurance contract:

_____ % Amount of Premium received by Insurance Company during the first contract years, and/or

_____ % Amount of Policy Account Value each year the contract is in force.

Contract Charges and Adjustments

Your annuity/life insurance contract includes certain charges and/or adjustments imposed by the Insurance Company as the issuer of the contract. These may include surrender charges, bonus re-capture provisions, market value adjustments, state premium taxes, or fees for optional annuity/life insurance contract features available through a ride to the contract. The specific charges, premium taxes, fees, and provisions applicable to Your specific annuity/life insurance contract are described in detail in the contract, contract disclosures, and other required forms provided to you in a connection with Your annuity/ life insurance application.

Acknowledgment and Approval

I acknowledge receipt of the information contained in this Disclosure Form and the other disclosures referenced above and have received them prior to the purchase of the annuity/life insurance contract. As IRA Owner of Plan fiduciary, I hereby approve the purchase of the annuity/life insurance contract.

_____ _____

Signature of IRA Owner/ Plan Fiduciary **Date**