



DOL Fiduciary Rule Summary

The U.S. Department of Labor (DOL) issued their final fiduciary and best interest ruling on April 6, 2016. In doing so, the DOL expanded the “investment advice fiduciary” definition under the Employee Retirement Income Security Act of 1974 (ERISA) and added to the, already complex, prohibited transaction exemptions for investment activities in the process. What has become known as the “DOL Fiduciary Rule” will affect advisers and financial professionals across the entire industry and although the obligation to fulfill a fiduciary role is mainly contingent on the type of investor you serve, we expect to see increased impact as other regulatory agencies as well as financial institutions and insurance companies move to harmonizing with the DOL’s Rule.

The Rule itself is over 1,000 pages and primarily centers around three key areas which are summarized below.

1. **The rule significantly expands qualifying situations in which anyone who provides investment advice for a fee**, such as an insurance agent or a registered representative of a broker-dealer will be treated as a fiduciary to ERISA plans and individual retirement accounts (IRAs);
2. Within the rule, **the DOL introduces a new class of exemptions, and modifies or revokes a number of the previous exemptions**, which were key in allowing financial institutions and advisers the capability to receive variable compensation like commissions; and
3. The DOL retained the ERISA distinction between **non-fiduciary “investment education”** and **fiduciary “investment advice.”**

Summary of Important Dates

The “official” effective date of the revised definition of “fiduciary investment advice” and the date the exemptions are considered “issued,” is **June 7, 2016**. As of **June 9, 2017**, the revised definition of “fiduciary investment advice” and the limited requirements of the BICE and PTE 84-24 will apply.

- The Transition Period runs from the **June 9, 2017**, applicability date to **January 1, 2018**.
- Beginning **June 9, 2017 through December 31, 2017** independent agents, without a Financial Institution, can use the transitional PTE 84-24, subject to the added impartial conduct standards to continue providing advice on qualified accounts.
- After the transition period ends on **December 31, 2017** the full rule goes into effect on **January 1, 2018**. As of that time, full compliance with the exemptions will be required.

In short, the Rule completely restructures the legal obligations and liability with respect to the how advisers interact with retirement investors, including existing and prospective clients. If an advisor intends to provide advice to retirement investors with regard to qualified monies, the advisor will be deemed a fiduciary and must use a prohibited transaction exemption (PTE).

What's this Means to the Independent Agent:

AimcoR members will remain a primary resource to independent agents and assist them with adapting to meet the full compliance standards of the Rule, both during the transition period and after.

To minimize disruption and provide some assurance for disclosure, there are two primary PTEs that agents are likely to rely on when recommending investment products and services and insurance products to an ERISA plan, participants and IRAs ("qualified accounts"). The two exemptions are:

- PTE 84-24 (which covers recommendations of insurance products, including life insurance and annuities).
- The Best Interest Contract Exemption (BICE) which can be used for sales of any investment products and services or any insurance products (including those covered by PTE 84-24).

How Does an Independent Agent Operate under the Fiduciary Rule?

To simplify the answer to this question we will divide the requirements into two periods. The first is the transition period, June 9, 2017 - December 31, 2017. This period has minimum requirements for the PTEs. The second period, starting January 1, 2018, requires full compliance with all the requirements of the PTEs.

During the transition period, PTE 84-24 and the BICE, require that an independent agent, and where applicable, their Financial Institution, adhere to the Impartial Conduct Standards, which are described in the bullets below:

- **A Best Interest Standard of Care** - The Best Interest standard of care is a combination of ERISA's prudent man rule and duty of loyalty. This states that advice provided must be in the best interest of the retirement investor and that an advisor must take into account the investment objectives, risk tolerance, financial circumstances and needs of the retirement investor, *without regard to their own financial or other interests*.
- **Reasonable compensation** - "reasonable compensation", a standard as determined under ERISA and the Internal Revenue Code (i.e., what would a transparent and competitive market pay for the services of the advisor?).
- **No Misleading Statements** - the advisor cannot make materially misleading statements about the investments, fees, material conflicts of interest or other matters that are deemed material to the investment decision.

In addition to the Impartial Conduct Standards, an advisor that is relying on PTE 84-24 during the transition period must also provide a disclosure to its retirement investor clients. This disclosure is not required for advisers who will rely on the BIC Exemption through a Financial Institution.

Below is a chart comparing the BICE to PTE 84-24.

		BIC Exemption	PTE 84-24
Impartial Conduct Standards	<i>Acting in the Best Interest of the retirement investor</i>	At the time a Recommendation, Adviser and FI act prudently and without regard to the financial or other interests of the FI, financial adviser, or any Affiliate, Related Entity, or other party.	At the time of the transaction, the fiduciary (insurance agent, broker, or insurance company) acts prudently and without regard to the financial or other interests of the fiduciary, any affiliate or other party.
	<i>No materially misleading statements</i>	Statements about recommended transactions, fees and compensation, Material Conflicts of Interest and any other matters relevant to the investment decisions will not be misleading at the time they are made.	Statements about recommended investments, fees, Material Conflicts of Interest and any other matters relevant to the investment decisions are not misleading at the time they are made. Failure to disclose a Material Conflict of Interest related to an investment decision is considered a misleading statement.
	<i>Reasonable compensation</i>	Recommended transactions will not cause compensation for our services that is in excess of reasonable compensation.	Not included in ICS but part of "old 84-24" and still required during Transition Period.
Written Fiduciary Acknowledgement		Required (January 1, 2018).	Not required but agent cannot make misleading statement disclaiming fiduciary status.
Disclosures		Contract, transaction and website (FI responsible) (January 1, 2018).	84-24 disclosure (advisor responsible) (June 9, 2017).

AimcoR members recognize that this is a complex matter and that the Rule, its requirements and the timing for compliance can be overwhelming. **What's important to know is that you're not alone.** AimcoR members have the resources to assist agents through the transition period and provide full support in adapting to full compliance with the Rule after the transition period has ended. Contact your local AimcoR member firm for consultative services and additional information as to how we can help.

Frequently Asked Questions

How will insurance & annuity carriers treat qualified Fixed Rate or Fixed Index Annuity sales from independent agents that are not affiliated with a Financial Institution?

Independent agents will need to comply with PTE 84-24 since insurance companies are not expected to assume the role of a financial institution and be a fiduciary. Several insurance companies have already announced they will not assume responsibility for ensuring that an independent agent is complying with the PTE 84-24 exemption.

Who has responsibility to ensure reasonable compensation for non-registered independent agents?

Compliance with PTE 84-24 is going to be left up to the fiduciary, which most often will be the agent. Neither the AimcoR member nor the insurance company will serve as a fiduciary although AimcoR members will continue to be a resource for agents in helping to comply with the Impartial Conduct Standards and the disclosure requirements.

The PTE 84-24 disclosure will include (1) a description of the relationship between the agent and the insurance company; (2) the insurance commissions the fiduciary receives (in the form of a percentage); (3) a statement of charges, fees, discounts, penalties or adjustments incurred with recommended product; (4) a list of the fiduciary's material conflicts of interest (ex. commission payments, grid payouts, trips, sales incentives, marketing support, receipt of variable compensation for selling one product over another); and (5) acknowledgement of the transaction by the retirement client.

What obligations, if any, will AimcoR members have with respect to non-registered independent agents who sell a Life Insurance contract, Fixed Rate or Fixed Index Annuities in qualified accounts?

AimcoR members will have no "obligation(s)" under PTE 84-24 and will only provide support to agents in helping to comply with the terms of PTE 84-24 and, specifically, the disclosures.

For additional information visit www.aimcorgroup.com/dol. Here you can find valuable resources, white papers summaries and other relevant information to address questions you may have.