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G R O U P

The DOL Conflicts of Interest Ruling

Prohibited Transaction Exemption (PTE) 84-24

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DEPARTMENT OF LABOR FIDUCIARY AND CONFLICT OF INTEREST REGULATIONS

"The Department's conflict of interest final rule and related exemptions will protect investors by requiring all who provide retirement investment advice to plans and IRAs to abide by a "fiduciary" standard—putting their clients' best interest before their own profits."

- U.S. Department of Labor

On April 6, 2016, the US Department of Labor (DOL) issued its final version of its new fiduciary and conflict of regulations that apply to most tax-qualified retirement plans. These new rules usher in significant changes to the regulations governing retirement plans covered under the Employee Retirement Income Security Act of 1974 (ERISA) and individual retirement accounts (IRAs), making this the first major overhaul since the passage of the ERISA over forty years ago.

For the first time since ERISA's passage, the new fiduciary rule will subject many of the investment and asset management recommendations from banks, broker dealers and other financial organizations to IRAs and other retail retirement investors to the fiduciary standards and remedies found in ERISA.

The new rules will impact a myriad of areas for financial institutions, including compensation practices, new client contracts, new "impartial conduct" policies and procedures, websites and additional disclosures to both investors and the DOL. Additionally, the rules also increase the litigation risks to financial institutions who are providing investment advice and other services to retail retirement clients.

While the implications of the new regulations will apply to a variety of investment products, this series will focus on the profound effect the DOL rule will have on the sale of annuities inside of retirement accounts and the funding of life insurance with premiums coming from required minimum distributions (RMDs) and other distributions from qualified retirement accounts to pay life insurance premiums.

Courtesy of **AimcoR Group, LLC**, we are publishing a series of papers to outline the main provisions and impacts of the new rules as they relate to financial institutions and their continuing efforts to provide annuity and life insurance solutions to clients.

A SUMMARY OF THE NEW REGULATIONS

In order to better understand the new regulations that will be in place, we should level set on the Department of Labor's role with respect to retirement plans and individual retirement accounts (IRAs) and what has changed under the new rules.

The Department of Labor (DOL) is responsible for ensuring that the retirement savings vehicles used by America's workers are secure and operated in accordance with federal pension laws and regulations. This responsibility includes setting the rules that govern conflicts of interest for both IRAs and employer-based plans and enforcing rules and regulations under the federal pension law, including the Employee Retirement Income Security Act of 1974 (ERISA).

The DOL is charged with interpreting the ERISA and Internal Revenue Code (Code) provisions relating to fiduciary status and prohibited transactions. Among other things, ERISA prescribes fiduciary standards applicable to those with responsibility for the maintenance and operation of employee benefit plans and the investment of plan assets. Also, ERISA prohibits certain transactions, called "prohibited transactions," which have been deemed to pose dangers to plans and participants. Prohibited transactions include "party in interest" transactions with, and fiduciary self-dealing with respect to ERISA-covered plans. The Code also has parallel provisions that apply similar prohibited transaction rules to transactions involving IRAs.

In April of 2016, the DOL issued new and amended regulations in an effort to better align the interests of financial advisers with those of plan participants and IRA owners. The new" Fiduciary Rule" effectively broadened the scope of entities and persons who are deemed as ERISA fiduciaries as a result of giving investment advice to an ERISA-covered retirement plan or its participants or beneficiaries and to IRAs. Also, the DOL introduced new prohibited transaction class exemptions meant to help preserve many existing compensation practices used by the financial services industry while managing conflicts of interest, and made amendments to a number of existing prohibited transaction exemptions.

The new and amended set of regulations included the following:

The Fiduciary Rule: A final regulation re-defining who is a "fiduciary" by reason of providing investment advice to a plan or an IRA.

Best Interest Contract Exemption (BIC Exemption): A new Prohibited Transaction Exemption (PTE) which allows financial institutions and advisers to retail retirement clients to receive forms of compensation that would otherwise be prohibited by ERISA and the Code, subject to compliance with a number of conditions.

Prohibited Transaction Exemption (PTE) 84-24: As amended, this PTE provides relief for certain transactions that occur when investment advice fiduciaries and other service

providers receive compensation for recommendations that plans or IRAs purchase insurance and fixed rate annuity contracts.

Principal Transaction Exemption: A new PTE which allows a financial institution to purchase or sell certain assets in "principal transactions" or "riskless principal transactions" with plans, plan accounts or IRAs, and to receive a mark-up, mark-down or other similar payments as a result of the advice.

Prohibited Transaction Exemption (PTE) 75-1: As amended, this PTE permits broker-dealers that are investment advice fiduciaries to receive reasonable compensation when they extend credit to plans and IRAs solely for the purpose of avoiding a failed securities transaction.

Prohibited Transaction Exemption (PTE) 86-128: As amended, this PTE no longer allows fiduciaries to receive compensation from IRAs in connection with certain securities transactions and mutual fund transactions under PTE 86-128 and instead shifts that to the BIC Exemption.

The Fiduciary Rule, changes to existing class exemptions, and certain elements of the Best Interest Contract Exemption will be applicable to financial institutions and the financial advisers employed by them upon the DOL's implementation of the rule, no earlier than one year after the April 2016 effective date.

However, in response to implementation concerns raised by the financial services industry, the DOL has adopted a "phased" implementation approach for the Best Interest Contract Exemption and the Principal Transaction Exemption so that firms will have more time to come into full compliance. The full disclosure provisions, the policies and procedures requirements, and the contract requirement for these new exemptions go into full effect on January 1, 2018.

This report focuses on the details of the amended Prohibited Transaction Exemption 84-24, which generally permits certain fiduciaries and other service providers to receive commissions in connection with the purchase of insurance contracts and Fixed Rate Annuity Contracts by plans and IRAs, as well as the purchase of investment company securities by plans.

In the other reports in this series, we take a deeper dive into the Best Interest Contract Exemption, the Impartial Conduct Standards, as well as the Fiduciary Rule itself.

It is important to understand that the DOL ruling will have profound impact across the financial services industry and that while certain products may appear to be "exempt", any recommendations regarding retirement planning and funding can create an immediate fiduciary responsibility on any advisor with or without intent depending upon funding and recommendations. We will discuss this in greater detail in later pieces.

PROHIBITED TRANSACTION EXEMPTION 84-24

> ***"The final amendment to PTE 84-24 preserves the availability of the exemption for the receipt of commissions by insurance agents, insurance brokers and pension consultants, in connection with the recommendation that plans or IRAs purchase insurance contracts and certain types of annuity contracts defined in the exemption as "Fixed Rate Annuity Contracts.""***
>
> \- U.S. Department of Labor

The DOL's new regulations for providing Fiduciary Investment Advice cast a much wider net in determining who is subject to being a fiduciary with respect to working with retirement accounts. At their essence, these new regulations are centered around the concept that as a fiduciary, one must provide investment advice that must be in the best interest of the client while managing and mitigating any conflicts of interest that could influence the advice provided.

Both ERISA and IRS Code regulations related to IRAs have long considered the receipt of compensation by a fiduciary that varies based upon the investment advice given and/or the receipt of compensation from third parties in connection with advice as a conflicted form of compensation and by extension, a prohibited transaction under the fiduciary rules.

While these forms of compensation are generally prohibited for fiduciaries, the DOL has the legal ability to create exemption rules, (known as "Prohibited Transaction Exemptions") which allow fiduciaries that provide advice to plans and IRAs to receive certain forms of compensation that would otherwise be prohibited, provided that the conditions of the exemption are met. The concept of a Prohibited Transaction Exemption is not new, as these rules have been employed within ERISA and IRS Code regulations (for IRAs) for many years.

Prohibited Transaction Exemption 84-24 (PTE 84-24) is an existing exemption originally granted back in 1977, and amended several times over the years. Historically, the exemption provided relief for certain parties to receive commissions when plans and IRAs purchased recommended insurance and annuity contracts and investment company securities (mutual fund shares) sold by principal underwriters. PTE 84-24 provided relief in connection with transactions involving ERISA-covered plans, Keogh plans, as well as IRAs and other plans described in Code section 4975, such as Archer MSAs, HSAs and Coverdell education savings accounts.

With respect to annuities and insurance, PTE 84-24 permitted insurance agents, insurance brokers and pension consultants to receive, directly or indirectly, a commission for selling insurance or annuity contracts to plans and IRAs. The exemption also permitted the purchase by plans and IRAs of insurance and annuity contracts from insurance companies that are parties in interest or disqualified persons. It is important to point out

that in the pre-amended version of PTE 84-24, the term "insurance and annuity contract" included all types annuities— including variable and fixed indexed annuities.

In its newly amended form, PTE 84-24 has been narrowed in its focus. The amended exemption (which becomes fully applicable on April 10, 2017) has been changed in the following areas:

- Relief under PTE 84-24 for investment company securities (mutual fund shares) sold by principal underwriters will now only be available for ERISA plans. Relief for sales of these products to IRAs has been moved to the Best Interest Contract Exemption.
- PTE 84-24 will continue to preserve the ability of insurance agents, insurance brokers and pension consultants to receive commissions, in connection with the recommendation that plans or IRAs purchase insurance contracts, but now limits the types of annuity contracts covered under the exemption to only "Fixed Rate Annuity Contracts" (meaning immediate annuities, deferred income annuities, traditional annuities, declared rate annuities or fixed rate annuities).
- Once applicable, the new PTE 84-24 will no longer cover variable, fixed indexed or similar annuities, in which contract values vary based on the investment experience of a separate account or accounts maintained by the insurer or the investment experience of an index or investment model. The DOL stated that it ultimately determined that the conditions of PTE 84-24 were insufficient to safeguard the interests of plans and IRAs in investing in variable, fixed indexed or similar annuity products and that the Best Interest Contract Exemption's conditions are better suited to address the conflicts of interest that accompany those products.

  Those seeking relief under PTE 84-24 must now comply with the Impartial Conduct Standards, including the duty to act in the best interest of the plan or IRA, the duty to avoid misleading statements and receiving no more than reasonable compensation. Of interest, requirements for reasonable compensation were already present in the pre-amended PTE 84-24 and while it remains in the final version exemption— the definition of commission has been altered.

With respect to annuities, it is important to note that while the application of the Amended PTE 84-24 is limited to Fixed Rate Annuity contracts sold to plans and IRAs, some firms may choose to seek relief for these products under the Best Interest Contract Exemption (BIC Exemption) instead of PTE 84-24.

The BIC Exemption is available to exempt prohibited transactions in connection the recommendation of any security or investment product. And, given that PTE 84-24 will no longer be available for variable and indexed annuities, some firms may choose to use the BIC Exemption for all of their annuity sales to IRAs and plans in order to provide consistency of process to both Advisers and clients.

The remainder of this paper will outline where and under what circumstances PTE 84-24 may apply, the exemption's requirements for compliance, and address some considerations for certain sales of life insurance under the new regulations. Finally, we

will discuss some considerations for firms as they develop plans to operationalize the newly amended PTE 84-24.

MAJOR PROVISIONS OF THE EXEMPTION

Covered Transactions under PTE 84-24

The newly amended PTE 84-24 now provides relief for six types of transactions, provided that the conditions of the exemption are satisfied. As detailed by the DOL in the recently revised rule, they include:

1. The receipt, directly or indirectly, by an insurance agent or broker or a pension consultant of an Insurance Commission and related employee benefits, from an insurance company in connection with the purchase, with assets of a Plan or IRA, including through a rollover or distribution, of an insurance contract or Fixed Rate Annuity Contract.
2. The receipt of a Mutual Fund Commission by a Principal Underwriter for an investment company registered under the Investment Company Act of 1940 (an investment company) in connection with the purchase, with Plan assets, including through a rollover or distribution, of securities issued by an investment company.
3. The effecting by an insurance agent or broker, or pension consultant of a transaction for the purchase, with assets of a Plan or IRA, including through a rollover or distribution, of a Fixed Rate Annuity Contract or insurance contract, or the effecting by a Principal Underwriter of a transaction for the purchase, with assets of a Plan, including through a rollover or distribution, of securities issued by an investment company.
4. The purchase, with assets of a Plan or IRA, including through a rollover or distribution, of a Fixed Rate Annuity Contract or insurance contract from an insurance company, and the receipt of compensation or other consideration by the insurance company.
5. The purchase, with assets of a Plan, of a Fixed Rate Annuity Contract or insurance contract from an insurance company which is a fiduciary or a service provider (or both) with respect to the Plan solely by reason of the sponsorship of a Master or Prototype Plan.
6. The purchase, with assets of a Plan, of securities issued by an investment company from, or the sale of such securities to, an investment company or an investment company Principal Underwriter, when the investment company, Principal Underwriter, or the investment company investment adviser is a fiduciary or a service provider (or both) with respect to the Plan solely by reason of the sponsorship of a Master or prototype Plan; or the provision of Nondiscretionary Trust Services to the Plan; or both.

With respect to annuity transactions, the final amendment to PTE 84-24 is now limited to plan and IRA transactions involving Fixed Rate Annuity Contracts only. In its final form, PTE 84-24 provides a streamlined exemption for relatively straightforward annuity products such as fixed rate, immediate and deferred income annuities, while shifting

coverage of variable annuity contracts, indexed annuity contracts, and similar annuity contracts, to the BIC Exemption.

Required Conditions of PTE 82-24

In General. The conditions detailed in the newly amended PTE 84-24 requires fiduciaries engaging in these transactions to:

- Adhere to Impartial Conduct Standards, including giving prudent advice that is in the customer's best interest, avoiding making misleading statements, and receive no more than reasonable compensation;
- Provide certain Transaction Disclosures to an independent fiduciary with respect to a Plan, or in the case of an IRA, to the IRA owner, prior to the execution of a covered transaction; and
- Maintain necessary records in a manner that are reasonably accessible for a period of six years, allowing for audit and examination to determine if the conditions of the exemption have been met.

Impartial Conduct Standards. When acting as fiduciary under the amended PTE 84-24, insurance agents, insurance brokers, pension consultants, insurance companies and investment company principal underwriters that are fiduciaries engaging in the exempted transactions must comply with fundamental Impartial Conduct Standards.

In broad terms, the Impartial Conduct Standards in PTE 84-24 require that when the above described fiduciaries provide fiduciary investment advice, they must act in the plan's or IRA's Best Interest, and not make misleading statements to the plan or IRA about the recommended transactions.

It is important to note that the Impartial Conduct Standards in PTE 84-24 (which were not previously present and were added as of this most recent amendment) do not include a requirement that the compensation received by the fiduciary and her affiliates be reasonable. While reasonable compensation is a part of the new BIC Exemption's Impartial Conduct Standards, the reasonable compensation requirement already existed in the pre-amended PTE 84-24, and remains as a requirement of the final, amended exemption. To be clear on this topic, the standard for compensation to not "exceed reasonable compensation" is required for PTE 84-24— it is just not a part of the newly added Impartial Conduct Standards within the exemption.

Also, unlike the BIC Exemption, there is no requirement to contractually commit to the Impartial Conduct Standards under PTE 84-24.

With respect to the Best Interest Standard under PTE 84-24, the insurance agent or broker, pension consultant, insurance company or investment company Principal Underwriter acts in the best interest of the plan or IRA when they:

> *act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk tolerance, financial circumstances*

and needs of the plan or IRA, without regard to the financial or other interests of the fiduciary, any affiliate or other party.

The Best Interest Standard is meant to express the concept that a fiduciary is required to act "solely in the interest" of the plan or IRA and not factor in any considerations for its or its affiliates benefit. As an example, an investment advice fiduciary, in choosing between two investments, could not select an investment based on the factor that it is better for the investment advice fiduciary's bottom line.

The second Impartial Conduct Standard detailed in PTE 84-24 requires that statements made by the insurance agent or broker, pension consultant, insurance company or investment company Principal Underwriter about recommended investments, fees, Material Conflicts of Interest, and any other matters relevant to a Plan's or IRA owner's investment decisions, are not materially misleading at the time they are made.

In the DOL's preamble to the amended exemption, it details the failure to disclose a Material Conflict of Interest relevant to the services it is providing or other actions it is taking in relation to a Plan's or IRA owner's investment decisions is considered a misleading statement. The DOL also defines the term Material Conflict of Interest as follows:

> *A "Material Conflict of Interest" exists when a person has a financial interest that a reasonable person would conclude could affect the exercise of its best judgement as a fiduciary in providing advice to a Plan or IRA.*

There is much more detail regarding the Impartial Conduct Standards that we could cover in this paper, however given that they have broad application across PTE 84-24 and the BIC Exemption (as well as other PTEs) the subject would be better covered its own writing. Refer to the DOL Impartial Conduct Standards paper, included in this report series, for a deeper dive into the Impartial Conduct Standards.

Disclosure Requirements. Under the Amended Exemption, an advice fiduciary must provide a Transaction Disclosure in writing prior to the execution of a transaction and in a format that is easy to read and understand. Regarding recommendations to purchase annuities and insurance contracts, the Transaction Disclosure must include:

- The insurance commission for the first year and for each renewal years that will be paid by the insurance company to the advice fiduciary (and, if applicable, a separate identification of any amount of the commission that will be paid to other persons as a gross dealer concession, override, or similar payment);
- A statement of any charges, fees, discounts, penalties, or adjustments which may be imposed in connection with the purchase, holding, exchange, termination, or sale of the contract; and
- If the advice fiduciary is an affiliate of the insurance company or the products it can recommend are limited by its relationship with an insurance company, a description of the nature of the affiliation, limitation, or relationship.

Regarding recommendations to purchase annuities and insurance products (as well as mutual fund securities), the commission must be expressed, to the extent feasible, as an absolute dollar figure. If this is not feasible, they can be stated as a percentage of gross annual premium payments, asset accumulation value, or contract value.

The Amended Exemption updated the frequency of new Transaction Disclosures that must be provided in connection with additional purchases. Disclosures must now be provided every year, instead of every three years as currently required in the pre-amended exemption.

New Definitions for Commissions

While the pre-amended version of PTE 84-24 provided an exemption for the specified parties to receive commissions in connection with the purchase of insurance or annuity contracts and investment company securities, it did not contain a separate definition of commission. Historically, the DOL has viewed the exemption to be limited to simple sales commissions on insurance or annuity contracts and investment company securities, as opposed to any types of other payments (i.e., revenue sharing, marketing fees, administrative fees, 12b-1fees) that have evolved since the exemption was originally granted back in 1977.

To clarify a more modern definition for the newly amended exemption, the DOL chose to specifically define what will be considered as a "commission" under the amended exemption.

In the final amendment, the DOL defines an Insurance Commission to mean a sales commission paid by the insurance company to the insurance agent, insurance broker or pension consultant for the service of effecting the purchase of an insurance or annuity contract, including renewal fees and trailers that are paid in connection with the purchase of the insurance or annuity contract. The term Insurance Commission does not include revenue sharing payments, administrative fees or marketing fees.

Similarly, the amended exemption defines Mutual Fund Commission as "a commission or sales load paid either by the Plan or the investment company for the service of effecting or executing the purchase of investment company securities, but does not include a 12b-1 fee, revenue sharing payment, administrative fee, or marketing fee."

With respect to Insurance Commissions and the concept of "gross dealer concessions" and "overrides", the DOL has stated that those types of payments generally represent a portion of the overall commission payment associated with an insurance or annuity transaction, and they are to be included within the amended exemption's definition of Insurance Commission. As such, the new disclosure conditions required by PTE 84-24 now require that both the agent's or broker's commission and the gross dealer concession or override be disclosed if the exemption is relied upon for such payments.

Considerations for Insurance Contracts

While much of the attention in insurance circles around the new Fiduciary Rule, the Best Interest Contract Exemption and PTE 84-24 has centered around implications for

annuities, certain recommendations of life insurance contracts may also be considered as providing fiduciary investment advice.

A rather straightforward example to consider is the use of life insurance as a part of a Split-funded Defined Benefit Plan. In this structure, the plan may invest in a wide array of investments, including cash value life insurance (typically whole life insurance).

Another scenario to consider is the sales concept of IRA Maximization. In this sales strategy, an Adviser identifies an IRA that is not needed by the client for retirement income. Rather than simply passing on the IRA to heirs, the client takes distributions from the account and uses the proceeds to purchase life insurance— which would result in an income tax-free insurance death benefit (improving the total value left to heirs).

The elements required to determine if advice qualifies as "Fiduciary Investment Advice" under the DOL's new Fiduciary Rule include:

- Does the advice fall under the two types of Covered Advice under the new rule?
- Has a recommendation been made?
- Will compensation be received in relation to the advice?
- Does a relationship exist that gives rise to the level of fiduciary investment advice?

In the new Fiduciary Rule, Covered Investment Advice is broadly defined by the DOL and falls into two main categories. In both categories, the advice provided includes recommendations to a plan, plan fiduciary, plan participant and beneficiary or IRA owner for a fee or other compensation, direct or indirect, as to:

- the advisability of buying, holding, selling or exchanging securities or other investment property, including recommendations as to the investment of securities or other property after the securities or other property are rolled over or distributed from a plan or IRA, and,
- the management of securities or other investment property, including, among other things, recommendations on investment policies or strategies, portfolio composition, selection of other persons to provide investment advice or investment management services, selection of investment account arrangements (e.g., brokerage vs. advisory); or recommendations with respect to rollovers, transfers, or distributions from a plan or IRA, including whether, in what amount, in what form, and to what destination such a rollover, transfer, or distribution should be made.

It is within these criteria of Covered Investment Advice where reference to "…the investment of securities or other property after the securities or other property are rolled over or distributed from a plan or IRA "and "… or distributions from a plan or IRA, including whether, in what amount, in what form, and to what destination such a rollover, transfer, or distribution should be made" where considerations for certain life insurance sales manifest.

In the example of an IRA Maximization Strategy, it would appear that despite the fact that by the time the premiums reach the life insurance policy they are no longer tax-

qualified or part of the IRA, the advice to take distributions and to what destination the distribution is made would qualify the advice (and by extension, the insurance transaction) as Covered Investment Advice under the new rules.

While life insurance may be included under the new Fiduciary Rule and PTE 84-24, the DOL has stated that fiduciary advice does not include recommendations to purchase "health insurance policies, disability insurance policies, term life insurance policies, and other property to the extent the policies or property do not contain an investment component."

Important Note: life insurance transactions conducted with clients using non-tax qualified sources of funds for premium payments will not fall under the scope of these new DOL Regulations. The fiduciary obligation under the new DOL Regulations only apply in the case of advice provided to participants and beneficiaries of an ERISA plan, IRA owners, and those who are acting as fiduciaries for an IRA or ERISA plan (e.g., a plan sponsor). Thus, any advice outside the scope of retirement accounts is not subject to the new regulations.

Firms need to carefully consider the specific circumstances where life insurance strategies and transactions may fall under the new DOL rules. Given the overwhelming focus on investment products and annuities at firms preparing for the new rules, considerations for certain sales of life insurance could be easily overlooked.

TIMING & CONSIDERATIONS

PTE 84-24 Implementation Timing

Unlike the Best Interest Contract Exemption, the new changes to PTE 84-24 will go into full effect on April 10,2017.

In response to implementation concerns raised by the financial services industry, the DOL has adopted a "phased" implementation approach for the BIC Exemption so that firms will have more time to come into full compliance. Parts of the new exemption's requirements will go into effect on April 10, 2017, otherwise known as "the Applicability Date". The full disclosure provisions, the policies and procedures requirements, and the contract requirement for the new BIC Exemption will go into full effect on January 1, 2018.

NEXT STEPS TO CONSIDER

The interpretations and clarifications of the new DOL regulations will likely continue for months and it may be years before we understand the full impact of the new regulations This means that many decisions have to be made in order to be prepared for the transition under the new rules, in part during 2017 and completely by January 1, 2018.

With respect to your firm's annuity and life insurance business, we would like to offer a few suggestions of advice when considering your next steps with respect to the new and amended regulations from the DOL, including the newly amended PTE 82-24.

1. **Decide how you will treat Fixed Rate Annuities.** Determine if you should run your fixed rate annuity business through the PTE 84-24 or the Best Interest Contract Exemption. While the requirements and liabilities are less cumbersome under PTE 84-24, firms should consider the overall composition of their annuity business and potential benefits of a uniform process under the Best Interest Contract Exemption for both the Adviser and client experience.
2. **Consider the implications for certain life insurance sales.** For many firms, IRA Maximization and Split Funded Benefit Plan sales concepts are a meaningful part of their non-annuity insurance business. Firms should consult with their counsel quickly regarding these transactions and their potential inclusion under the new Fiduciary and Conflict of Interest Rules. Given the overwhelming focus on investment products and annuities at firms preparing for the new rules, considerations for certain sales of life insurance could be easily overlooked.
3. **Get comfortable with the new liabilities.** For most firms, about half of the client assets under their care come from qualified plans or IRAs. Absent an eleventh-hour change or successful legal delay, the new rules from the DOL are here to stay. Also, the SEC will eventually catch up to the DOL with their uniform standards which will most likely be aligned with the new DOL rules. To be sure, additional liabilities will be present by reason of acting as a Fiduciary under the new Fiduciary Rule. Re-examine how you conduct your business, how you incent your advisers and put controls in place to monitor how they operate— in order to avoid systematic failures and the consequences that can arise from them. Obviously, the downstream impacts to Advisers will be disruptive, however the timing to make sweeping changes is ideal— as every other firm out there will be going through the same challenges and changes. **This is an opportunity to redesign how you conduct business, and a good time to consider implementing a comprehensive holistic planning approach incorporating life insurance, long-term care and disability coverage, mitigating client risk of AUM loss, increasing AUM retention and protecting you and your Advisors from potential breaches of fiduciary obligations and ultimately litigation.**
4. **Decide how your firm will handle non-retirement business.** Any advice outside the scope of retirement accounts is not subject to the new regulations— so technically that business does not need to comply with the new rules. However, for the sake of uniformity of process for the Adviser and the client experience, firms should

carefully consider how they choose to handle non-retirement accounts. It may be hard to defend a separate process/standard of care for these assets and can possibly create more confusion of the part of the client— not to mention the Adviser.

5. **Develop a dialogue with the DOL.** The DOL has publicly stated that they stand ready to assist firms as they transition to new the requirements— so they are expecting your call. As in most endeavors, the earlier you start doing this, the better.
6. **Consider working with an institutional insurance provider and introducing your Advisors to experts that can become an extension of their and provide the protection / risk mitigation service offerings they need to be offering their clients.** There are many institutional insurance organizations and normally they come with no up-front cost to you or your advisors. Traditionally, Financial Institutions have a number of "aligned / approved" insurance relationships. While this may work well for some, most of the time finding an insurance provider with national reach, consistent rules of engagement and multiple carriers creates a better, more unified approach. This will become more important as these new regulations take effect and as due diligence and documentation requirements continue to increase.

NEXT IN THE SERIES

We have published a series of papers to outline the main provisions and impacts of the DOL's 2016 Final Fiduciary and Conflict of Interest Regulations as they relate to financial institutions and their continuing efforts to provide annuity and insurance solutions to clients. The series of papers include the following topics:

- The Fiduciary Rule
- The Best Interest Contract Exemption
- Prohibited Transaction Exemption 84-24
- The Impartial Conduct Standards

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