

# Athene's Guide to DOL

## Department of Labor Fiduciary Rule

### Transition Period from June 9, 2017 to January 1, 2018

Under the new DOL rule, effective June 9, 2017, a person is considered a fiduciary with respect to a retirement plan or IRA holder if he or she provides investment advice for a fee or other compensation. Investment advice is now deemed to include advice provided to a plan, plan participant or IRA holder in connection with the purchase or sale of a financial product or in connection with the distribution from a 401k plan or IRA.

You are a **Fiduciary Investment Adviser** under the rule if you render investment advice to plans, plan sponsors, fiduciaries, plan participants, beneficiaries of IRAs or IRA owners in exchange for a fee or other compensation, direct or indirect.

As a fiduciary, you cannot receive any compensation (commissions) from a third party for the sale of a financial product unless you are otherwise covered by an exemption. There are two categories of exemptions that allow for continued receipt of commissions.

### Annuity Business Exemptions

- Best Interest Contract Exemption (BIC)
- 84-24 Exemption – Fixed Annuities, SPIA, MYGA, FIAs

The following guide will provide you with information that will assist you with your compliance of the DOL Fiduciary Rule.

### Overview

This guide will only focus on the rule's requirements from the applicability date through full compliance. Additional updates to this guide will be made for the January 1, 2018 changes.

- **Effective Date:** June 6, 2016
- **Applicability Date:** June 9, 2017
- **Full Compliance Date:** January 1, 2018

The U.S. Department of Labor (DOL) issued the final DOL Conflict of Interest Rule (commonly referred to as the Fiduciary Rule) on April 6, 2016, expanding the "investment advice fiduciary" definition under ERISA, and modifying the prohibited transaction exemptions for investment activities using the expanded definition. This rule was issued to ensure qualified sales if annuity products are sold in the best interest of the customer without regard to the compensation of the producer.

## Overview (continued)

The transition rule includes:

- Expansion of the situations where producers are considered fiduciaries to ERISA plans and individual retirement accounts (IRAs). This expansion results in more situations where producers are prohibited from receiving compensation unless covered by an exemption.
- Development of two exemptions:
  - Prohibited Transactions Exemption 84-24 (PTE 84-24), which generally applies to fiduciary recommendations made with respect to Fixed, Fixed-Indexed and Single Premium Immediate Annuities (Athene will use this exemption for all Athene annuity sales); and
  - The Best Interest Contract Exemption (BIC Exemption), which generally applies to fiduciary recommendations (other carriers may elect to use this exemption for non Athene annuity sales)

## What Will PTE 84-24 Require?

During the transition period, the requirements for meeting this exemption are two-fold.

- You must meet the Impartial Conduct Standards provided in the 2016 version of PTE 84-24.
  - You must act in the best interest of the client;
  - Compensation received must not be in excess of reasonable compensation; and
  - Statements about the transaction, fees, and compensation, or other material conflicts of interest must not be misleading.
- You must meet the requirements of the 2006 version of PTE 84-24.<sup>1</sup>

## Material Conflicts of Interest

A “Material Conflict of Interest” is any financial interest that may affect a producer’s best judgement in providing recommendations to clients. A Material Conflict of Interest exists, for example, where:

- The producer receives commission upon the sale of a recommended product
- The producer receives differing commission amounts depending on the type of product purchased
- The producer has an incentive to increase sales volume (for example, where the producer may be eligible to participate in company trips or receive additional compensation).<sup>2</sup>

## PTE 84-24 Disclosures and Recordkeeping

### PTE 84-24 Disclosure

PTE 84-24 requires producers to provide certain written information to their clients before a sale. The disclosure must state:

- The producer’s relationship with the insurance company who issued the product, and a description of any limitation on the producer’s ability to recommend insurance or annuity contracts
- The sales commission that will be paid on the sale
- Charges, fees, discounts or other adjustments that may apply under the annuity contract

Athene has developed a form (PTE 84-24 Disclosure and Acknowledgment ([Form 20889](#))) to assist in the sale of annuities involving qualified funds. This form is available on [Athene Connect](#) and will become part of the application packet. You will not be required to send this form back to Athene. A copy of the worksheet must, however, be kept in your personal files for each client, including those that are either not provided or do not accept your recommendation. Before the sale, the client must acknowledge (sign) the written disclosure and approve the transaction.

## Recordkeeping

To verify compliance in a DOL or IRS audit, the producer must keep the signed disclosure in their records for six years after the sale.

## How is Athene Helping Ensure 84-24 Requirements are Met?

The DOL rule is applicable to the following types of qualified transactions:

- Direct transfer from an existing IRA
- Inherited IRA
- After tax funds to a new or existing IRA
- Rollover from an employer retirement plan

## Application Transition Rules

- The new DOL process applies to application signed dates on or after June 9, 2017
- Applications dated prior to June 9, 2017 (in home office or in transit) are not impacted by the DOL rule and additional DOL forms are not required

## PTE 84-24 Disclosure and Acknowledgement ([Form 20889](#))

- Producers will be provided a worksheet that they should use to provide disclosures under PTE 84-24
- Producer must complete the form by disclosing his or her compensation
- This worksheet will be kept in producers' personal files for each client and retained for at least six years following the date of sale

## Suitability Form

- There will be a change to the acknowledgement section of the Suitability Form
  - Producer will attest to having met the disclosure and record-keeping requirements of PTE 84-24
  - Owner will acknowledge that the required information was disclosed

## How Does "Best Interest" Compare to Suitability?

Suitability is a requirement imposed by state regulation that every company must follow; this is different than the best interest standard required by the Fiduciary Rule. Athene will continue to require the Customer Identification and Suitability Confirmation Worksheet ([17341](#)), or the Annuity Suitability Questionnaire ([55444 - FL](#)) for each application.

## Electronic Applications

The appropriate DOL forms will be displayed on qualified sales when using the Firelight E-App.

**For financial professional use only.** Not to be used with the offer or sale of annuities.

The term "financial professional" is not intended to imply engagement in an advisory business with compensation unrelated to sales. Financial professionals will be paid a commission on the sale of an Athene annuity.

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<sup>1</sup> The Fiduciary Rule does not require elimination of all Material Conflicts of Interest. However, under PTE 84-24, a producer must discuss his or her Material Conflicts of Interest with a client before completing a sale. Failure to inform a client of a Material Conflict of Interest is treated as a misleading statement, which violates the Impartial Conduct Standards.

<sup>2</sup> The Fiduciary Rule does not require elimination of all Material Conflicts of Interest. However, under PTE 84-24, a producer must discuss his or her Material Conflicts of Interest with a client before completing a sale. Failure to inform a client of a Material Conflict of Interest is treated as a misleading statement, which violates the Impartial Conduct Standards.