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Sent: Wednesday, May 03, 2017 10:24 AM
To: Doug Hall
Subject: DOL Fiduciary Rule - Effective June 9



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DOL Fiduciary Rule - Effective June 9

Implications for Life Insurance and Annuities Sales!

What You Need To Know and Do

Following a 60 day delay issued by the Trump Administration, the Department of Labor's "Fiduciary Rule" will go into partial effect June 9, 2017. After a transitional period, full compliance will be required January 1, 2018. RD Marketing Group has previously provided explanatory information regarding this highly publicized and controversial rule change related to retirement plans and IRAs.

Below is a summary of what will be required by the agent or advisor under the transitional version of the rule on June 9 and the implications for the life insurance and annuity sales process.

Expanded Fiduciary Definition

Beginning June 9, many recommendations of insurance, annuities or investments that would not have been previously considered fiduciary in nature will be treated as constituting "fiduciary advice". While fiduciary status brings several process requirements as described below, it also has implications for the receipt of compensation. The traditional commissions received by agents will now become

"prohibited transactions" in connection with both sales to IRAs or retirement plans and recommendations to distribute from IRAs and plans.

The reasons for the prohibition are that the commission payments come from a third party and can vary from one product to another. There are, however, rules called "prohibited transaction exemptions" that allow for the receipt of traditional commissions if certain conditions are met. As part of issuing the delay, streamlined or user friendly exemptions were allowed until January 1, 2018 when some of the more burdensome requirements become effective.

What is Fiduciary Advice?

After June 9, recommendations that will be considered fiduciary advice include:

- > To roll retirement plan benefits over to IRAs (including individual retirement annuities) or to transfer existing IRAs from other institutions.
- > To take distributions from retirement plans and IRAs and purchase annuities or insurance products with the proceeds.
- > To purchase annuities or other investments within IRAs even if the recommendations are given on an infrequent basis and previously considered sales communication not investment advice.

In simple terms, any advice to make purchases in a retirement plan or IRA, transfer or exchange assets or take distributions or rollovers will trigger fiduciary status.

What exemption applies to sales June 9-January 1?

PTE 84-24 is an existing exemption that has been used by the insurance industry since the 1970's and will be available for all types of annuity recommendations (fixed-rate, fixed indexed and variable) through the transition period ending January 1. Any new requirements, such as additional disclosures or the need to use an alternative exemption, are deferred until year end. The exception is the requirement to begin operating with "Impartial Conduct Standards" goes into effect on June 9.

What are Impartial Conduct Standards?

Producers need to prepare for the compliance with the following standards.

- > Advice must be in the client's "best interest"...which requires the fiduciary duties of prudence and loyalty. There should be a thorough, well documented process that takes into account all factors going into a recommendation.
- > All compensation must not exceed a reasonable level. This is typically measured by comparisons to industry standards for the services provided and products sold.
- > All statements to clients about products, material conflicts of interest (such as compensation incentives), fees and other relevant factors must not be materially misleading.

In general, you need to collect all relevant information about the client, fully analyze it, and then proceed accordingly and appropriately. Documenting the

process is essential to demonstrate compliance.

Documenting the Process

The importance of good documentation cannot be over emphasized. Existing forms and questionnaires used to document sales such as suitability and profile forms are a good start, but they should be augmented with additional information regarding your analysis and other questions of the client. Two specific areas that will require documentation under the new rule are recommendations related to rollovers and carrier fitness.

Rollovers - To make a prudent fiduciary recommendation you must gather and consider information regarding the plan the rollover is coming from. This would include investment options, the services and advice available, distribution options, and all fees and expenses. This information could come from the client, a 5500 form or benchmark information from similar plans.

Annuity Carrier Information - You must be able to show you considered information related to carrier solvency and the ability to make promised payments. An intermediary or third party organization can do this screening for you, but you should document that someone has done the due diligence and you considered the information.

What happens January 1?

As the rule is currently written, effective January 1 fixed indexed annuities and variable annuities will no longer fall under the PTE 84-24 but will be required to come under a "Best Interest Contract Exemption". This is a **new** exemption that has fairly extensive requirements. One of those is the requirement that a "Financial Institution" enter into a contract (providing various disclosures) with the client on behalf of the agent or advisor.

Currently only banks, broker dealers, registered investment advisors and insurance companies qualify as Financial Institutions. Insurance companies have been unwilling to take on that role and insurance agencies and brokerages do not qualify. The DOL proposed a class exemption for "insurance intermediaries" that would allow brokerage firms to function as a Financial Institution, but it was extremely restrictive. As it stands today, this could become problematic for producers without a securities license wanting to sell fixed indexed annuities to plans and IRAs. It remains uncertain what will happen between now and January 1 regarding the exemption and Financial Institution process for fixed indexed annuities.

We will keep you informed as additional information becomes available.

What Happens Next?

The DOL has indicated they don't expect any further delays in the rule beyond June 9. Although, they must still comply with the Trump order to again review the rule to determine if it would adversely impact American's access to retirement information and advice and conduct an economic and legal analysis of the likelihood of increased litigation and greater cost for consumers. If it is determined

the rule would lead to these problems, they are expected to modify or rescind it.

Leadership changes are also occurring at the DOL. Alexander Acosta was just confirmed by the Senate last week as Labor Secretary and other key positions in the Department will be filled over the next several months. In the meantime, the industry lobby on both sides of this issue remains very active. So, there are still several factors in play that could affect the ultimate outcome.

While there is still quite a bit uncertainty about where all this will eventually land, we know what the expectations are for June 9 and you need to be ready to comply.

If you have any questions regarding the fiduciary rule, please contact Ron Angarella at 800-367-5620 ext. 251 or rangarella@rdmarketinggroup.com.

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