

What Annuity Sales Agents Need to Know about DOL Fiduciary Rule 3.0

On July 1, 2022, the last of the temporary enforcement policies for the Department of Labor's latest fiduciary ruling expired, bringing all aspects of the ruling into full effect. The so-called Ruling #3, adopted in December 2020, focused on the fiduciary status of rollover advice for ERISA products and IRAs. It also created a new Prohibited Transaction Exemption: PTE 2020-02, which established a "best interest" for conflicted advice aligned with the primary regulation of various types of financial services providers. So, how does this new ruling impact sales of fixed annuities, especially as it relates to insurance-only producers?

First things first: What transactions are impacted by this version of the ruling?

You may be 'acting as a fiduciary' if you make a recommendation, including taking a distribution, rollover or transfer from the following plans or accounts:

- ✓ ERISA Plans
- ✓ IRAs
- ✓ Other Tax Qualified Plans, such as Keogh plans, SIMPLE, SEP, and 401(a) plans, etc.
- ✓ Health Savings Accounts

Importantly, the ruling has no impact on non-qualified annuities.

What is 'acting as a fiduciary' mean in this version of the ruling?

Limited to contracts listed above, you are acting as a fiduciary if you satisfy the Department's Five-Part test. This test states that when a person:

1. Renders advice as to the value of securities or other property, or make recommendations as to the advisability of investing in, purchasing, or selling securities or other property;
2. do so on a "regular basis";
3. pursuant to a mutual agreement, arrangement or understanding with the Plan, Plan fiduciary, Plan participant or IRA/HSA owner, that
4. the advice will serve as a primary basis for investment decisions with respect to Plan or IRA assets and that
5. the advice will be individualized based on the particular needs of the Plan or IRA

If you believe the transaction and relationship you have with a current or prospective client satisfies all aspects of this five test, you should take appropriate steps to ensure compliance with the ruling.



Not Your State's Best Interest Rule

While some of the changes the NAIC made to its annuity suitability model regulation (Model #275), may seem similar to those required by the DOL's Fiduciary Ruling, there are some important differences:

➤ **The NAIC Model Regulation needs to be adopted at the state level, the DOL Ruling is Federal.**

The DOL Ruling is not specific to insurance. Rather it covers all financial services that recommend changes to an existing ERISA or IRA contract. The NAIC Model Regulation is just that...a model, and only covers insurance and annuities. It needs to be adopted by the state legislators before it becomes effective. Since last year we have been updating state adoptions and their training requirements in our Compliance Corner publications. Stay tuned for a new edition coming out soon for further updates!

➤ **For states that have adopted the NAIC model, it applies to all annuities being solicited.**

As mentioned earlier, the DOL Fiduciary Ruling guidance applies to qualified annuities only, and only in situations where a recommendation has been made to rollover funds from an existing account or contract to a new one. The annuity suitability regulation applies to all annuity contracts, tax qualified or non-qualified, and regardless of whether or not a rollover or transfer is involved. Therefore, there are times when BOTH regulations will apply to an application.

➤ **There are no additional training requirements for the DOL Fiduciary ruling, but there are for the annuity suitability regulation.**

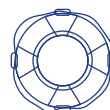
To date, all of the states that have adopted the NAIC model changes to the annuity suitability regulation have required producers to take additional training (either 1 or 4 CE credits depending upon circumstances and timing). No specific additional training is required for the DOL Fiduciary Ruling, though both regulations do require additional documentation to be presented to clients to satisfy other compliance responsibilities.

➤ **Where the application is issued matters.**

It matters, that is, for the annuity suitability regulatory changes, not for the DOL fiduciary ruling (which again applies to all qualified contract rollovers). For Oceanview, an individual contract's jurisdiction is determined by where the application is signed. Agents need to be sure that they are properly licensed and appointed in that jurisdiction to write Oceanview annuities there. So, if you are writing a contract in a non-resident state, be sure your licensing and appointments are up-to-date, including whether you need to satisfy the requirements of the changes to the suitability regulations.

What do you need to do to comply with the DOL Ruling?

If you determine that the transaction you are recommending is an act of a fiduciary based on this DOL ruling, there are two potential PTE options. The first is the PTE 2020-02 mentioned earlier in this article. This option is generally not available to many independent insurance agents, as it requires a supervisory financial institution to provide direct supervision and documented procedures over these transactions to "mitigate conflicts of interest."



If you are an Investment Adviser Representative (IAR) of an RIA, or a registered representative of a broker-dealer, check with your compliance officer to see if your transactions qualify under this PTE.

In cases where the annuity producer is not a registered rep or IAR, PTE 84-24 is an option. This exemption is designed to disclose potential conflicts to the client prior to or at the time of application. After it is completed, it must be signed by the client or prospect and include:

- Sales commission to be received from the sale, expressed in either absolute number or as a percentage of premium,
- A description of any charges, fees, discounts, penalties, and/or adjustments under the contract, and
- If the producer's ability to recommend certain products is limited by agreement with an insurance company, a description of the affiliation, relationship and limitation must be included.

We have made a sample of a PTE 84-24 disclosure available here. [Oceanview does not at this time require that this disclosure be included with the annuity application when a producer believes they are acting as a fiduciary, nor does the producer need to use this particular PTE 84-24 disclosure document.](#) However, when a producer believes they are acting as a fiduciary, they should always keep a copy of the completed appropriate PTE documents to prove compliance with this ruling.

What's next for the ruling?

The ruling faces a number of court challenges, including one in a district court in northern Texas filed by the FACC. This case contends that the Ruling 3.0 is essentially a slightly revised version of ruling 2.0 which was vacated by the U.S. Third Circuit of Appeals. This case, along with others, are likely to be appealed regardless of outcome, so any direct impact for or against, is likely months away.

The Department of Labor has also indicated in their regulatory agenda for the remainder of 2022 that it intends to issue yet another version of the ruling. The Department's regulatory agenda has a number of other items on it, so most observers believe it unlikely that another version will be published this year, however, many believe that it is only a matter of time before additional refinements to the ruling are put in place, possibly as earlier as 2023.



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