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## New IRA Requirements COMPLIANCE BULLETIN

As many of you know, the U.S. Department of Labor (DOL) has been examining fiduciary issues for years. More recently the DOL published its revised interpretation of the “five-part test” used to determine who is a fiduciary.

While many questions remain amid considerable uncertainty, F&G has decided to implement certain procedures out of an abundance of caution to help agents comply with any applicable ERISA or Tax Code requirements.

As explained below, F&G is taking steps to protect you, your clients and the company in case it is determined that agents are acting as fiduciaries when selling any of our fixed annuity products in the tax-qualified market including IRAs. References to “IRAs” herein include any tax-qualified annuity product.

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# Revisiting the Five-Part Test

Historically, most insurance agents selling fixed annuity products in the individual market have not been considered fiduciaries under either state or federal law.

However, recent pronouncements by the DOL indicate insurance agents may be considered fiduciaries under ERISA or parallel Tax Code provisions when selling tax-qualified products under certain conditions.

In general, the five-part test makes an agent a fiduciary if advice provided by the agent:

- 1. Relates to buying or selling investments in a retirement plan or IRA;**
- 2. Is provided on a regular basis;**
- 3. Is made pursuant to mutual understanding between the agent and client or IRA;**
- 4. Serves as a primary basis for decisions; and**
- 5. Is individualized based on needs of the client or IRA.**

While the five-part test itself has not changed, the DOL has expressed a potentially broader interpretation of elements of the test including the second element of what constitutes a “regular basis.”

DOL commentary now suggests any ongoing or expected advice relationship between you and your client could constitute a fiduciary relationship for ERISA and Tax Code purposes if all five parts of the test are otherwise met. While sales made on a one-time or sporadic basis may still not trigger fiduciary status, the DOL commentary is complex and dependent on facts and circumstances. Agents are encouraged to obtain professional legal advice on fiduciary considerations and requirements.

If you are considered a fiduciary, it means under applicable ERISA and/or Tax Code requirements that you can receive commission compensation only if you satisfy what is called a Prohibited Transaction Exemption (PTE).

# About the New PTE 84-24 Acknowledgment Form

Given these circumstances, F&G has decided to require any agent selling our IRA products to provide disclosures and satisfy conditions of PTE 84-24.

F&G is taking this action as a precaution with the understanding that you may or may not be acting as a fiduciary in any given situation.

We will seek to make compliance as straightforward as possible from a processing standpoint by asking that you submit a **PTE 84-24 Acknowledgment Form** with every IRA product sale.

The PTE 84-24 Acknowledgment Form attests:

- **You understand you may be considered a fiduciary for ERISA and/or Tax Code purposes;**
- **You provided certain disclosures to the client as set forth in PTE 84-24;**
- **The disclosures include your commission compensation;**
- **The client signed indicating acceptance of the disclosures and approval of the transaction; and**
- **The transaction satisfies other conditions of PTE 84-24 such as being on arms-length terms and conducted in the ordinary course of business.**

To assist further with compliance, F&G is providing you with a sample disclosure form, which is linked on the page below. It is provided merely as a convenience; you rather than F&G are required to ensure all necessary disclosures and conditions of PTE 84-24 are met.

You may use the sample disclosure form to support your compliance with PTE 84-24 but that specific form is not required and should not be submitted to F&G.

Only the PTE 84-24 Acknowledgment Form should be submitted to F&G with each application for an IRA annuity.

# About the Sample PTE 84-24 Disclosure Form

The [Sample PTE 84-24 Disclosure Form](#) provided by F&G is designed to disclose compensation paid to you for sale of tax-qualified annuity products and provide other relevant information to your client. As explained above, it is provided merely as a convenience; you rather than F&G are required to ensure all necessary disclosures and conditions of PTE 84-24 are met. You may use this form or any other form containing the required information for purposes of satisfying the PTE 84-24 conditions.

Please note the following about the Sample PTE 84-24 Disclosure Form:

- **It is incumbent upon you to ensure all information disclosed on the form is complete, accurate and truthful.**
- **It is a standardized form so be sure to review its content carefully and make any necessary changes to conform its contents to your situation and practices.**
- **When disclosing commission, you should take into account the commission amount paid to you by F&G directly and any additional commission paid to you by any IMO or up-line agency such that total commission received by you for sale of the annuity is properly reflected.**
- **Four lines are provided for disclosing base commission. Only relevant lines should be filled in for each sale.**
- **Agents should be careful to read the accompanying instructions explaining how to complete the base commission disclosure if the form is being used in connection with sale of an F&G annuity. Relevant commission schedules are found on [SalesLink®](#).**
- **A separate line is provided for disclosure of bonus commission in cases where an agent is eligible for additional commission based on sales performance.**
- **Documentation that you satisfied conditions of PTE 84-24, if applicable, should be retained in your files for the life of the product plus six years or as required by your agency or producer agreement, whichever is longer.**
- **Documentation that you satisfied conditions of PTE 84-24, if applicable, must be provided to F&G or appropriate regulators upon request.**

A copy of the Sample PTE 84-24 Disclosure Form will be posted and available on [SalesLink®](#). Agents should make sure they review and follow the [Disclosure and Acknowledgment Form Instructions](#) when using the Sample PTE 84-24 Disclosure Form.

# Other Important Information

It should be emphasized fiduciary status, if applicable, may subject agents to elevated standards of care in dealing with clients. Fiduciary status, for example, may trigger standards and liabilities under ERISA if the agent is deemed a fiduciary in connection with advice to participants rolling assets out of an employer plan into an IRA. Agents should exercise caution and may wish to consider structuring their business practices where possible to avoid acting as a fiduciary or subjecting themselves to ERISA fiduciary duties with respect to rollovers out of employer retirement plans.

F&G requires all agents to abide by duties and standards set forth in our Market Conduct Guide, Producer Agreement, and Code of Ethical Conduct. Agents must always ensure they also satisfy any duties or standards of care imposed upon them by laws or regulations to the extent applicable including but not limited to fiduciary requirements as set forth by the DOL. F&G has prepared a [Market Conduct Guide addendum](#) specifically addressing DOL requirements that each agent should review for important details.

Please note the Company seeks to promote compliance with DOL requirements but does not supervise nor assume any liability with respect to fiduciary responsibilities borne by agents including but not limited to their satisfaction of conditions of PTE 84-24. Please note also that F&G does not act as a financial institution under DOL's newly created class exemption PTE 2020-02.

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## Looking Ahead

As noted above, there is currently a lot of uncertainty on who is considered a fiduciary, how the prohibited transaction exemptions apply, and whether DOL will be seeking further changes. During this time, F&G will seek to help agents comply with applicable DOL or IRS requirements as we understand them. As more information becomes available or circumstances warrant, F&G reserves the right to make further changes to these procedures.

As always, we appreciate your attention to good compliance practices. We strive to provide your clients with first rate annuity and life products and help you deliver outstanding service.

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**Questions? Contact us at 800.445.6758 or [SalesDesk@fglife.com](mailto:SalesDesk@fglife.com).**

F&G is the marketing name for Fidelity & Guaranty Life Insurance Company issuing insurance in the United States outside of New York and, in New York only, Fidelity & Guaranty Life Insurance Company of New York. Each Fidelity & Guaranty Life company is solely responsible for its contractual commitments.

The information provided in this bulletin is solely intended to promote compliance with applicable ERISA and Tax Code requirements. Nothing herein should be construed as legal or compliance advice. Agents and agencies are strongly encouraged to seek their own professional legal counsel.