

# DOL FAQs:

## Temporary nonenforcement period ends December 20, 2021

### WHAT IS THE NEW DOL RULE TITLED, "IMPROVING INVESTMENT ADVICE FOR WORKERS AND RETIREES"?

On December 18, 2020, The Department of Labor (DOL) issued the new rule which became effective on February 16, 2021. The rule has a temporary nonenforcement period ending on December 20, 2021. The new rule:

- Restores the "5-part test" defining who is a fiduciary
- Restores the 2006 version of Prohibited Transaction Exemption (PTE) 84-24
- Creates a new PTE which requires a Financial Institution and compliance with "Impartial Conduct Standards"

If the DOL rule applies to a transaction (i.e., qualified funds/rollover) and you pass the 5-part test, you will not be able to receive compensation on the sale of qualified fixed index annuities or when funds from a qualified plan or IRA are used to purchase a nonqualified annuity, without complying with a PTE.

We expect that independent insurance agents will utilize PTE 84-24 in their practices in order to comply with the new DOL rule.

### WHEN DO I NEED TO COMPLY WITH THE DOL RULE?

On February 16, 2021, the new DOL fiduciary rule became effective, and the temporary nonenforcement period will end on December 20, 2021.

### WHEN DOES THE DOL RULE APPLY TO MY BUSINESS?

To know when the DOL rule applies, you always need to consider where the money is coming **from** and where it's **going**.

- The rule applies for advice to move money into qualified accounts, regardless of whether the source of the funds is a nonqualified or qualified account.
  - Types of sources could include fixed index annuities (FIAs), variable annuities (VAs), fixed annuities (FAs), life insurance, mutual funds, checking accounts, etc. Please note that Allianz does not issue qualified life insurance policies.
- The rule also applies for advice to move money from a qualified account into a nonqualified account. This includes a nonqualified life insurance policy being funded from a qualified account.
- The rule does not apply for advice to move money into a nonqualified account from a nonqualified account.

Once you have determined that the funds you are working with may be subject to the rule, you should evaluate whether or not you meet the 5-part test.



## WHAT IS THE 5-PART TEST?

The advice you give on qualified funds/rollovers is considered to “pass” the 5-part test and be subject to a fiduciary standard if it meets ALL of the following criteria:

- 1.** You render advice to the plan 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.** This advice is rendered on a regular basis;
- 3.** The advice is pursuant to a mutual agreement, arrangement, or understanding with the plan, plan fiduciary, or IRA 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 the DOL rule applies to the transaction and advice meets **all** of the above criteria, it **passes** the 5-part test. This means the advice is subject to a fiduciary standard **AND** you must comply with an available PTE.

## PREVIOUSLY, THE ADVICE I GAVE DIDN'T PASS THE 5-PART TEST; DOES THIS MEAN THE RULE DOESN'T APPLY TO ME?

No. The DOL has revised their interpretation of the 5-part test in their latest rulemaking documents. The DOL has now stated that a recommendation to take a distribution from a qualified plan or rollover into an IRA is now more likely to be considered fiduciary investment advice than in the prior interpretation (meaning the transaction would most likely “pass” the 5-part test and be considered fiduciary investment advice under the rule).

## HOW CAN I COMPLY WITH THE DOL RULE?

If the new rule applies to your business (see previous FAQ) and you pass the 5-part test, you are prohibited from receiving compensation unless you act in accordance with the DOL fiduciary standards **AND** comply with an available PTE. PTE 84-24 is available to you as an independent insurance agent, and Allianz has created specific training on this exemption to help you understand your responsibilities and how to comply with the rule.

## WHAT IS PROHIBITED TRANSACTION EXEMPTION 84-24?

PTE 84-24 is one of the exemptions available to you as an independent agent, and if complied with, allows you to receive compensation on qualified fixed index annuities. Under PTE 84-24, it is up to the **financial professional** to:

- Act according to a fiduciary standard on certain qualified transactions
- Effect a transaction in the ordinary course of business
- Accept only reasonable compensation
- Provide the client with the required disclosure

## WHAT ARE THE DISCLOSURE REQUIREMENTS NEEDED TO COMPLY WITH PTE 84-24?

Prior to the execution of a transaction, you must provide a disclosure to the client that covers the following:

- The nature of any affiliation or relationship you have with the insurance company and to what extent the insurance company limits your ability to recommend the insurance or annuity contract;
- Sales commission, expressed as a percentage of gross annual premium payments for the first year and renewal years, payable to you in connection with the sale;
- Charges, fees, penalties, or adjustments imposed under the contract in connection with the purchase.
  - Note: For Allianz fixed index annuities, the *Product Preliminary Contract Summary/Statement of Understanding* provides the required information related to product charges, fees, penalties, or adjustments and meets this specific disclosure requirement. For Allianz fixed index universal life insurance, the *Product Illustration* provides this information and meets this specific disclosure requirement.

The client should sign this disclosure to acknowledge receipt of the disclosures and to approve the transaction.

We have created a disclosure template that will be available for you to use as a starting point for you to develop your own PTE 84-24 disclosure template for your practice. You can also use your own template, another industry template, or consult your legal counsel.

The PTE 84-24 disclosure should **NOT** be sent to Allianz when you submit a policy. Please keep this document in your client file for 6 years as required by the Prohibited Transaction Exemption.

Access the template and template instructions from our [DOL training page](#).

## WHAT CHANGES CAN I EXPECT WHEN SUBMITTING ALLIANZ BUSINESS?

You will see minimal changes when it comes to submitting Allianz business. Rather, as the DOL Rule requirements are yours as an independent agent, we will instead ask that you are informed on the new rule and will be requiring you to attest to DOL compliance via the financial professional report page when you submit an FIA application. Only you, the financial professional, will need to sign the attestation. If you do not submit the updated form, you may have additional requirements.

## I ALREADY AM REQUIRED TO COMPLETE THE NAIC BEST INTEREST FORM; ISN'T THAT SUFFICIENT TO COMPLY WITH THE DOL RULE?

Although similar information is required for both the NAIC form and the PTE 84-24 disclosure, there are some differences, including when the disclosures are required to be used. You should ensure you are meeting both requirements independently. Note that the NAIC disclosure requirement is now included in the Allianz application for states that have adopted the model. The PTE 84-24 disclosure form will not be included in the Allianz application packet and should **NOT** be sent to Allianz. Please retain these disclosures in your client files.

## WHAT IS THE OTHER PTE AVAILABLE?

PTE 2020-02 permits financial professionals to receive compensation beyond Commissions, which would otherwise be prohibited because its receipt creates conflict of interest. These types of compensation can include commissions, 12b-1 fees, and revenue sharing paid in connection with the sale of fixed index annuities and variable annuities, to the extent the conditions of the 5-part test are met with respect to such compensation. In order to rely on PTE 2020-02, financial institutions and their investment professionals must generally comply with the following conditions at the time of the transaction:

- Investment advice must meet the Impartial Conduct Standards, which means the advice must be in the best interest of the client, compensation must be reasonable, and the financial professional cannot make any materially misleading statements.
- Financial professionals and their financial institution must provide a written disclosure to the client acknowledging they are a fiduciary and describing their services and any material conflicts of interest.

In order for a financial professional to use this exemption, they must be affiliated with a financial institution. Banks, broker/dealers, investment advisors, and insurance carriers are allowed to act as a financial institution (FI). Other entities can apply to become a financial institution with the DOL. At this time, Allianz does not intend to act as a financial institution and expects that financial professionals not affiliated with a BD or RIA will utilize PTE 84-24 for compliance with the DOL rule.

If you are affiliated with a BD or RIA, please reach out to your back office for guidance on which PTE your institution will be utilizing.

## WILL ALLIANZ ACT AS FINANCIAL INSTITUTION IF I WANT TO UTILIZE PTE 2020-02 INSTEAD OF PTE 84-24?

No, Allianz will not assume the role of a financial institution under the new rule. To submit business without another financial institution, you should utilize PTE 84-24 in order to comply.

## I'M AN INSURANCE-ONLY FINANCIAL PROFESSIONAL NOT REGISTERED WITH FINRA; HOW DO I COMPLY WITH THE DOL RULE?

PTE 84-24 is available to you as an insurance-only financial professional. Under PTE 84-24, it is up to the financial professional to effect a transaction in the ordinary course of business, provide the client with any required disclosures, and accept only reasonable compensation. Please see the nonrequired training on PTE 84-24 on the DOL page of our website for more information on the DOL Rule and PTE 84-24.

## I'VE HEARD THE DOL IS PLANNING TO MAKE CHANGES TO THE RULE. HAVE YOU HEARD THE SAME? IS PTE 84-24 GOING AWAY?

The DOL has announced that review and possible changes to the "Improving Investment Advice for Workers and Retirees" rule is on their Q3/ Q4 agenda. At this time, we do not know what will come of that review and are continuing to prepare for the nonenforcement period to end on December 20, 2021. We continue to monitor this and will keep you updated if there are any changes that will impact your business.

## I'M REGISTERED WITH A BROKER/DEALER; HOW DO I COMPLY WITH THE DOL RULE?

If you are working with a broker/dealer, you should get instructions on compliance with the new DOL rule "Improving Investment Advice for Workers and Retirees" from your back office.

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Please visit our DOL training page for more information.