

Fiduciary Rule Compliance Best Practices

1. Show your work.

Just as your math teacher used to tell you when you solve a complex math problem, solving a client’s retirement objectives also requires you to show your work – especially under the DOL Rule. This is important for a number of reasons. First, you are required to keep client records for at least six years under PTE-84-24, and having a complete file helps protect your recommendation much more than a lightly documented file. In addition, showing your work helps build the case for your ultimate product recommendation and how it lines up to address the client’s goals. Last, if you’re ever challenged under the Rule, you have great documentation showing your due diligence and your compliance with your fiduciary duty.

2. Build your own “best interest process.”

While there are many ways to build a best interest process, most come down to 4 basic steps:

- **Customer Profile**
- **Needs Analysis**
- **Product Filtering**
- **Product Recommendation**

The idea here is to first ensure that you have performed a comprehensive review of the client’s current profile, including a documentation of current assets and initial discussions about financial, insurance, and retirement goals. Document everything. Once you have the customer profile, conduct a thorough needs analysis, including the client’s liquidity needs, income needs, risk tolerance, current assets, time horizon, and other relevant information. In some ways, this mirrors the suitability profile you may already use today. Once you have all the information documented, and you are confident a fixed annuity is in the customer’s best interests to fill a specific need, consider all the products you can recommend and begin filtering them down by the information you have documented. Ultimately, you’ll likely land on a couple products that fit the client’s needs. At this point, documentation is the most important because you’ll want to demonstrate why the ultimate product you chose makes the most sense and how it helps fulfill the client’s needs and objectives compared to everything else you have offered.

Customer Profile	Needs Analysis	Product Filtering	Recommendation of Product
<ul style="list-style-type: none">• Begin building suitability profile• Initial needs analysis• Documentation of current assets• Explain your product and service limitations	<ul style="list-style-type: none">• Review of Suitability Profile• Factors include financial goals, risk tolerance, income needs, time horizon, existing assets, liquidity needs, net worth, income, expenses, current portfolio, etc.• Must demonstrate need for an annuity	<ul style="list-style-type: none">• Some may rely on a technology solution to help filter products based on review of needs analysis• If no tech solution, use experience and training to filter out imprudent products• Filter down to possible products in best interest	<ul style="list-style-type: none">• Ultimate product recommendation must be justifiable based on customer needs/goals (accumulation, liquidity, income, guarantees, etc.)• Document rationale in detail• Produce all required disclosures prior to execution of contract forms (e.g., PTE 84-24 Disclosure Form)

3. Embrace your new duties as fiduciary.

As outlined above, you have several new duties – including the duties of prudence and loyalty – to your clients in the qualified marketplace. Embrace these new duties and tell clients what the standard means for them. Letting them know that you have their interests above your own may be important for them to hear. Similarly, do not make any misleading statements about your role and the products you can offer. Avoiding misleading statements is a component of the Impartial Conduct Standards and is not just limited to your dealings with clients. It can also include the way you market your services and the way you advertise. Be mindful of these new duties and how they interact with your current practice.

4. Avoid (or disclose) material conflicts of interest.

Some conflicts are unavoidable, but many are. Be careful to avoid those conflicts of interest that may put you in a position where you are no longer putting your client's interest above your own. This can come into play if you have a certain sales goal or initiative that will result in an incentive or step up in compensation. Whenever possible, avoid conflicts. But if your situation makes those conflicts unavoidable, be sure to disclose them in full – and be open with your clients if they ask questions about your conflicts.

5. Be careful not to accidentally trigger fiduciary advice.

Recall that fiduciary advice is broadly construed and can be triggered the more individualized you make your recommendation to a client or potential client. If a client perceives the recommendation to be made to him or her individually, it will be considered a recommendation under the Rule. While a PTE is not triggered until compensation is paid, you still may be providing investment advice without knowing you are, so be careful and keep your communications generalized.

6. Take a heightened approach to replacements and rollovers.

Recommending that a client stop doing one thing with their money and instead do another thing brings about heightened scrutiny whenever that rollover or replacement results in compensation payable to you. As a result, be sure to explain to the client why you recommend the new product and how it will better serve the client's financial needs and objectives. Describe the differences in fees, what benefits would be lost or gained, and document the ultimate reason you and your client agree that the new product is best.

7. Be flexible

While we know that 2017 will include PTE 84-24 and the Impartial Conduct Standards as part of the required compliance regime, we do not know if President Trump's DOL will adopt the Rule as is, make changes to the Rule, or delay it further. As a result, be flexible and willing to adapt to changes in the regulatory environment. Ensure that your process is not so rigid that it cannot account for potential changes on the horizon.