

## Background

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The DOL fiduciary rule expands the definition of “fiduciary” to include individuals who provide retirement investment advice to investors in Individual Retirement Accounts (IRAs) and other investment accounts not covered by the Employee Retirement Income Security Act (“ERISA”). The rule requires that investment advice be offered solely based on the best interest of the client, independent of the financial interest of the advisor, a standard that previously only applied to retirement investment accounts subject to ERISA, such as 401(k) accounts. Significant compliance implications are expected in, among other areas, conflicts of interest disclosures, fee- vs. commission-based models, variable annuities and IRA sales, as well as potential customer account repapering requirements based on business decisions made by the firm.

## Solution

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RegEd has partnered with the Insured Retirement Institute (IRI) to deliver three DOL fiduciary rule training courses for financial professionals and home office personnel. The courses have been shaped with input from more than 850 industry professionals to enable firms in the securities and insurance industries to effectively train employees and partners on the requirements of the rule. RegEd has also developed additional courses specifically for call center employees, wholesalers, level fee fiduciaries and insurance agents.

## DOL Fiduciary Rule Course Descriptions

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### IRI Course 1 – DOL Fiduciary Rule Basics

This introductory course provides a high-level overview of the DOL fiduciary rule, the Best Interest Contract (BIC) exemption, and amended PTE 84-24. The course explores the rule’s requirements with respect to all types of investment products, and explains how the rule will affect financial professionals. The course covers:

- About the Rule and Exceptions to the Rule – What the rule does and when it will go into effect, and basic parameters of the exceptions for general communications, education, and advice to sophisticated independent fiduciaries
- Being an ERISA Fiduciary – Responsibilities and obligations imposed on ERISA fiduciaries, including compliance with the prohibited transaction rules or meeting the requirements of prohibited transaction exemptions, and differences between ERISA standard, suitability standard, and SEC fiduciary standard
- The BIC Exemption – How the exemption is applied, including the impartial conduct standards, the disclosure requirements, the rules for minimizing the impact of material conflicts, the “best interest contract” requirement, and BIC Lite (level fee fiduciaries)
- Impact on Adviser Compensation – Including the meaning of “reasonable compensation”
- Other topics include the rule’s impact on rollover recommendations, proprietary products, and fixed rate annuity contracts (PTE 84-24)

### IRI Course 2 – The DOL Fiduciary Rule for Fiduciaries

This course addresses the definition of a “fiduciary” under the DOL fiduciary rule. It covers how to comply with the rule, the Best Interest Contract (BIC) exemption and PTE 84-24, including their requirements. The course provides a deeper dive into the requirements of the rule, the BIC exemption and PTE 84-24 and covers:

- Definition of a Fiduciary under the Rule – How the universe of advisers treated as ERISA fiduciaries has expanded under the rule, including the definition of “recommendation”
- The Best Interest Standard – Requirements of the duties of prudence and loyalty that comprise this standard, and best practices for satisfying the best interest standard (including process, knowledge, planning and documentation)
- Compensation Issues – How to comply with the rules regarding reasonable compensation, incentives, and differential compensation/neutral factors
- Other Requirements of the BIC Exemption – When and how to comply with the “best interest contract” requirements and the disclosure rules
- Other topics include the transition period rules, grandfathering, the special rules for proprietary products/third party payments, BIC Lite, and PTE 84-24

### IRI Course 3 – The DOL Fiduciary Rule for Non-Fiduciaries

This course focuses on the exceptions from the DOL’s fiduciary rule, and will be useful to anyone seeking to ensure they do not cross the line into fiduciary status – including broker-dealer and insurer home office personnel such as call center representatives, product design teams, marketing and communications groups, attorneys and compliance professionals, and others. The course covers:

- Non-Fiduciary Conduct – The types of conduct that would not make someone a fiduciary under the rule
- Exceptions to the Rule – How to qualify for the exceptions to fiduciary status, including the exceptions for self-marketing (“hire me”), general communications, investment education, transactions with sophisticated independent fiduciaries, and the other exceptions under the rule
- Avoiding Prohibited Transactions – Ways to proceed without having to rely on any exception or exemption

### RegEd Course 475 – The DOL Fiduciary Standard in Retirement Accounts

This course discusses prohibited forms of compensation for fiduciaries as well as regulatory exemptions (BIC and PTE 84-24) that allow for payment of commissions in connection with the sale of annuities and other investment products. The course covers:

- Standard of Care – A comparison of the fiduciary standard of care to the suitability standard
- Who Is a Fiduciary? – The types of investment advice that would make an adviser a fiduciary and exceptions to the rule, such as investment education and transactions with independent fiduciaries

### RegEd Course 475 – The DOL Fiduciary Standard in Retirement Accounts (cont'd)

- Best Interest Contract (BIC) Exemption – Transactions covered by the BIC exemption, the impartial conduct standards, firm policies and procedure, disclosures, the BIC contract, proprietary products, and level fee fiduciaries
- Prohibited Transaction Exemption 84-24 – Coverage of the exemption limited to fixed-rate annuities and the impartial conduct standards
- Selling Annuities Under the Fiduciary Standard – Legal liability and importance of firm policies, importance of documentation, and identification of an adviser's firm

### RegEd Course 476 – Ethics of Social Media in Insurance

This course focuses on ethical issues that arise from the use of social media. It discusses a producer's obligations of honest communication with the public under state insurance laws, FINRA rules, and the DOL fiduciary standard. It covers potential liability for defamation and copyright infringement and obligations under privacy laws. It covers cyber-security risk, recordkeeping, and the importance of firm policies and procedures. The course covers:

- Common Social Media Services – A review of common social media services and features that could create ethical challenges
- Regulation of Communication with the Public – A review of laws that regulate communication with the public including state unfair practices and marketing rules, FINRA Rule 2210, and the DOL fiduciary rule and the impact of these rules on social media
- Defamation Copyright, and Privacy – A review of laws that prohibit defamation, use of copyrighted material, and invasion of privacy
- Cyber-Security – The types of cyber-attack and the types of cyber-security insurance
- Policies and Procedures – Recordkeeping requirements and the importance of following firm policies and procedures.

### RegEd Course 889 – The Best Interest Contract Exemption

This course focuses on the BIC Exemption using hypothetical situations to illustrate various provisions in the BIC exemption. The course covers:

- When the exemption is needed
- What the firm is required to do, including with respect to disclosures, policies and procedures, the written contract

### RegEd Course 889 – The Best Interest Contract Exemption (cont'd)

- What the individual adviser is required to do, including a discussion of the impartial conduct standards, making recommendations in the client's best interest, documenting the basis for the adviser's recommendations
- Limitations on the sale of proprietary products and third party payments
- "Level fee" arrangements (BIC Lite)

### RegEd Course 890 – When Do You Become a Fiduciary?

This course looks at what circumstances, and what communications, cause an adviser to become a "fiduciary" under the DOL rule. It covers:

- The differences between the old five-part test and the new "fiduciary" test using a series of hypothetical situations
- The exceptions to "fiduciary" status, including
  - General communications
  - Investor education
  - Transactions with independent fiduciaries
  - Advice to a plan as a swap counterparty
  - Advice given by a plan employee

### RegEd Course 891 – What's the Difference Between the FINRA Standard of Conduct and the DOL "Fiduciary" Standard?

This course focuses on the "impartial conduct standards" and compares them to the FINRA standard applicable to non-retirement investors. The course covers:

- What the new DOL standard entails
- A review of FINRA's suitability standard, including the fact that it has been interpreted to include the client's "best interest"
- The fact that FINRA rules include a prohibition against misleading statements and imply a requirement of "reasonable compensation"
- The fact that the differences between the two standards are more procedural but require more disclosure, deliberation and documentation
- Best practices for complying with the fiduciary standard

### **RegEd Course 892 – Prohibited Transaction Exemptions Under the DOL Rule**

This course looks at the prohibited transaction exemptions (PTEs) under the DOL fiduciary rule. The course covers:

- An overview of all PTEs
- The BIC Exemption
- The PTE for principal transaction involving certain assets
- Revised PTE 86-128 for effecting the sale of mutual fund shares to plans
- Revised PTE 84-24 for sales of fixed rate annuities
- Revised PTE 75-1 for extensions of credit

### **RegEd Course 893 – The DOL Fiduciary Rule for Call Center Employees**

Call center employees need to know about the DOL fiduciary rule because inadvertently crossing the "fiduciary" line has consequences for both the employee and the firm. This course provides guidance on what a call center employee can and cannot say in order to avoid fiduciary status. It also looks at the rule's primary exemption, the BIC Exemption. The course covers:

- The New Definition of a "Fiduciary" – The types of conduct and communications that could cause you to cross the "fiduciary" line
- The "Investor Education" Exception – What customer questions you can (and can't) answer
- The BIC Exemption – What your firm may permit you to do if it follows the BIC Exemption

### **RegEd Course 894 – Communications with the Public Under the DOL Fiduciary Rule**

The DOL's new fiduciary rule significantly changes the menu of what can and cannot be said to certain members of the public, i.e., retirement investors, without crossing the "fiduciary" line. Even when proceeding under one of the PTEs that allow variable compensation, communications are still subject to the requirements of the rule. This course examines the inherent communication rules built into the DOL rule and offers guidance as to what communications can and cannot be made--both to avoid fiduciary status in the first instance and after becoming a fiduciary. The course covers:

- An Overview of the Rule – Including the new definition of a "fiduciary"
- Communications to Avoid – What constitutes "investment advice" and a "recommendation" that could cause you to be deemed a "fiduciary"
- Permitted Communications – One-on-one communications that do not make you a fiduciary and the exceptions for general communications, education, and communications with specific persons

### **RegEd Course 894 – Communications with the Public under the DOL Fiduciary Rule (cont'd)**

- Email Communications – Issues under the DOL rule regarding email
- Communication standards – Including FINRA rules

### **RegEd Course 895 – Wholesaler Conflicts of Interest After the DOL Fiduciary Rule**

This course examines the specific types of conflicts of interest encountered by broker-dealers who act as wholesalers and their associated persons, and analyzes the consequences arising from the DOL's new fiduciary rule that seeks to eliminate conflicts of interest. The course covers:

- Wholesaler Conflicts – The types of conflicts that arise in the wholesaler context and best practices to mitigate them
- Applicability of the DOL Rule – An examination of the DOL fiduciary rule and its impact on wholesalers
- Guidance – Activities that are and are not permitted under the rule

### **RegEd Course 900 – Level Fee Fiduciaries Under the DOL Fiduciary Rule**

You may already be a level fee fiduciary working at a registered investment advisor and need to know what, if anything, you need to do to satisfy the new DOL rule regarding the provision of investment advice to retirement investors and IRA owners. Or, you may be a commission-based broker seeking to move to a level fee fiduciary business model to avoid the more onerous BIC Exemption. In either case, this course is intended to assist you in navigating your way through the rule so as to avoid any “prohibited transactions” that could result in regulatory fines and other costs. The course covers:

- Level Fee Fiduciaries – Defines who is a “level fee fiduciary”
- Applicability of the DOL Rule – Identifies situations where a “level fee fiduciary” need to be concerned about the DOL rule
- Guidance – How to proceed as a “level fee fiduciary” without violating the rule