

## FCSLA DOL FIDUCIARY RULE TRAINING SHEET

### I. Brief Summary of the Rule

In 2017, the Department of Labor (“DOL”) finalized a Rule that modified the test for determining when a person is a *fiduciary* under the Employee Retirement Income Security Act (“ERISA”). The Rule has gone through several administrations, many years of litigation and review and some areas of non-enforcement. Under the Rule, insurance agents who sell qualified annuities or insurance products to a retirement plan may fall under the *fiduciary* definition. This is important because ERISA and the IRS’ Prohibited Transaction Rules prohibit fiduciaries from engaging in *self-dealing* or transactions that could give rise to *conflicts of interest*. Under these rules, unless an exemption exists, a *fiduciary* cannot receive a commission or other consideration for the sale of a product that the agent recommended to an IRA owner (or ERISA plan) without violating the IRS Prohibited Transaction Rules.

There are a several exemptions to the IRS Prohibited Transaction Rules, some more complex than others. Because FCSLA only offers fixed rate annuities and life insurance products, agents selling only FCSLA products may utilize the PTE 84-24 Exemption. Under PTE 84-24, the receipt of a sales commission for the sale of FCSLA products would permissible under ERISA and IRS Prohibited Transaction Rules as long as the agent meets the PTE 84-24’s requirements.

#### PTE 84-24 Requirements:

1. Meet impartial conduct standards: i) sale must be in client’s best interest; ii) statements made in connection with the sale are not materially misleading; and iii) compensation must be reasonable
2. Provide Disclosure Form: Agent is required to give applicant disclosure PRIOR to sale stating: i) what commission will be received both initially and each renewal year; ii) a statement of any charges, fees or penalties imposed as a result of purchase and termination of the contract; iii) applicant must sign disclosure saying they approve of the transaction.
3. Recordkeeping: Agent is required to: i) maintain records necessary to demonstrate the exemption rules were followed for 6 years; ii) make the records available to DOL, IRS and the applicant.

### II. Explanation of PTE 84-24 Requirements:

A. Impartial Conduct Standards. The “impartial conduct standards,” are consumer protection standards that ensure that advisers adhere to fiduciary norms and basic standards of fair dealing.

i. Best Interest Standard of Care

This means that the agent must act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use based on the investment objectives, risk tolerance, financial circumstances and needs of the investor, without regard to the financial or other interests of the agent or any other party.

For example, the recommendation of a particular insurance company must be prudent and the recommendation of the particular insurance contract must also be prudent.

An agent must disclose any limitations on the types of products he/she recommends, and can not recommend a product if it is not a prudent choice for the applicant. If, for example,

it would be imprudent for the applicant to purchase an annuity in light of their liquidity needs, existing assets, lack of diversification, financial resources, or other considerations, the agent should not recommend the annuity purchase, even if that means the agent cannot make a sale.

The agent MAY NOT be a trustee or fiduciary with discretionary authority over the investment of the assets involved.

ii. Materially Misleading Statements

All statements by the agent about the recommended contract, fees and material conflicts of interest must not be materially misleading. The failure to describe a material conflict of interest is deemed to be misleading. The agent may not make misleading statements about the products involved, the investment alternatives, their compensation, and any conflicts of interest.

iii. Reasonable Compensation

The adviser's compensation must be no more than reasonable and the agent cannot receive any additional financial incentives, for example, trips, awards, or bonuses.

B. Disclosure

The Agent must provide the applicant with the attached Disclosure Form. In the Disclosure Form, the Agent represents that he/she is will comply with the Impartial Conduct Standards, act in the applicant's best interests, not make any materially misleading statements and disclose any material conflicts of interest. A material conflict exists when the agent has a financial interest that a reasonable person would conclude could affect the exercise of the agent's best judgment as a fiduciary rendering advice to the applicant. The Agent must also disclose the commission to be received in connection with the sale and any renewals/additional premiums.

The Disclosure Form must be signed by the Agent and the Applicant prior to the sale. Copies of the Disclosure Form are to be given to: i) the Applicant; ii) retained by the Agent and iii) FCSLA with the application. In the Disclosure Form, the Agent represents that he/she is acting in the best interests Material conflict of interest: A material conflict exists when a person has a financial interest that a reasonable person would conclude could affect the exercise of its best judgment as a fiduciary in rendering advice to a plan or IRA.

A Disclosure Form **must be completed for additional sales** if more than one year has passed since the last Disclosure Form was completed.

C. Recordkeeping

The agent is required to maintain records necessary to demonstrate compliance with the Rules for 6 years. Such records would include the Disclosure Form, suitability forms and any other records that show the sale and agent's recommendations were based upon the best interests of the applicant. The agent must make the records available to DOL, IRS and the applicant upon demand.