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On December 18, 2020, the Department of Labor adopted PTE 2020-02, Improving Investment Advice for Workers & Retirees, which addresses investment advice to plan participants and beneficiaries and IRA owners. PTE 2020-02's preamble includes an interpretation that recommendations to roll over assets from an employee benefit plan to an IRA, or recommendation of an IRA will be considered fiduciary investment advice if the DOL's five-part test is satisfied. The five-part test will be met, and thus the recommendation will constitute fiduciary investment advice if the producer:

1. renders advice to ERISA retirement plans, participants in those plans or IRA owners as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing or selling securities or other property;
2. on a regular basis;
3. pursuant to a mutual understanding;
4. that the advice will be a primary basis for investment decisions; and that
5. the advice will be individualized to an ERISA plan participant or the IRA owner.

The Department views advice to roll over Plan assets can occur as part of an ongoing relationship or an anticipated ongoing relationship that an plan participant enjoys with his or her advice provider. For example, in circumstances in which the advice provider has been giving financial advice to the individual about investing in, purchasing, or selling securities or other financial instruments, the advice to roll assets out of a Plan is part of an ongoing advice relationship that satisfies the "regular basis" requirement. Similarly, advice to roll assets out of the Plan into an IRA where the advice provider will be regularly giving financial advice regarding the IRA in the course of a more lengthy financial relationship would be the start of an advice relationship that satisfies the "regular basis" requirement. In these scenarios, there is advice to the Plan—meaning the Plan participant or beneficiary—on a regular basis.

If the five-part test is satisfied, investment advice fiduciaries must either satisfy PTE 2020-02 or PTE 84-24. PTE 84-24 provides relief for a smaller range of compensation practices, including the insurance agent's receipt of a sales commission from an insurance company and the insurance company's receipt of compensation and other consideration in connection with annuity sales, provided the conditions of the exemption are satisfied.

On October 25, 2021, the DOL further delayed enforcement of PTE 2020-02. For the period from December 21, 2021 through January 31, 2022, the Department will not pursue prohibited transactions claims against investment advice fiduciaries who are working diligently and in good faith to comply with the impartial conduct standards for transactions that are exempted in PTE 2020-02 or treat such

fiduciaries as violating the applicable prohibited transaction rules. Impartial conduct standards require fiduciaries to (i) provide advice that reflects 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, (ii) receive only reasonable compensation, and make statements that are not materially misleading.

Americo is not a financial institution within the meaning of PTE 2020-02. Each producer will need to determine whether it is an investment advice fiduciary, and if so, each producer is solely responsible for ensuring compliance with the applicable PTE. **Americo has no responsibility for, and is not monitoring whether a producer is an investment advice fiduciary, and if so, the producer's compliance with any PTE.**

To the extent that a producer is an investment advice fiduciary and relies on PTE 84-24, the producer is required to provide certain disclosures at the time fiduciary investment advice is given. These disclosures are related to compensation, fees and charges, and potential conflicts of interest. Although Americo is not monitoring agent compliance with PTE 84-24, each producer should maintain written documentation for no less than 6 years of the producer's compliance with PTE 84-24 to the extent that the producer is an investment advice fiduciary. Americo continues to monitor DOL activity and will advise of any further delays of enforcement.

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