

# ERISA Insights



April 23, 2024

## DOL Releases Final Fiduciary Rule for Investment Advisers

The Department of Labor (DOL) has released a final rule updating the definition of an investment advice fiduciary under ERISA. The [“Retirement Security Rule”](#) expands the definition of an investment advice fiduciary and requires that advice given to a broader range of retirement investors meets fiduciary standards. This final rule also makes amendments to prohibited transaction exemptions including [PTE 2020-02](#) and [PTE 84-24](#) regarding eligibility and conditions for exemption.

An individual that is considered a fiduciary is subject to certain duties and restrictions under ERISA and is also subject to prohibitions against transactions involving conflicts of interest under the Internal Revenue Code. Regulations defining a fiduciary for investment advice purposes were originally issued in 1975. More recently, the DOL's stated intent is to update the regulations to make them more consistent with the text of the statutory definition, better protect retirement investors who more commonly accept primary responsibility for their personal investment decisions, and further provide a uniform standard for all retirement investors in light of rulemaking by other regulators.

According to an executive summary of the final rule, a person is an investment advice fiduciary if they provide a recommendation in one of the following contexts

- The person either directly or indirectly (e.g., through or together with any affiliate) makes professional investment recommendations to investors on a regular basis as part of their business and the recommendation is made under circumstances that would indicate to a reasonable investor in like circumstances that the recommendation
  - is based on review of the retirement investor's particular needs or individual circumstances,
  - reflects the application of professional or expert judgment to the retirement investor's particular needs or individual circumstances, and
  - may be relied upon by the retirement investor as intended to advance the retirement investor's best interest; or
- The person represents or acknowledges that they are acting as a fiduciary under Title I of ERISA, Title II of ERISA, or both with respect to the recommendation. The recommendation also must be provided “for a fee or other compensation, direct or indirect” as defined in the final rule.

The final rule and correlating exemptions are expected to be published on April 25, 2024, in the *Federal Register*. The final rule is effective 150 days after publication. Both amended PTE 2020-02 and amended PTE 84-24 include a one-year transition period after their effective dates under which parties have to comply only with the Impartial Conduct Standards and provide a written acknowledgment of fiduciary status for relief under these PTEs.

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