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DOL Grants New Extension of Investment Advice Rulemaking



A Financial services firms—that were in a mad dash to comply with a new and important exemption for investment advice fiduciaries to ERISA plans and IRAs—can rest easy, at least for now. The U.S. Department of Labor (DOL) announced yesterday a new [temporary enforcement policy](#) with respect to Prohibited Transaction Exemption 2020-02 (PTE 2020-02).

PTE 2020-02 enables an “investment advice fiduciary” to provide rollover advice and advice on how to invest assets within a plan or IRA, and receive compensation for such advice, in a manner that avoids a non-exempt prohibited transaction. The exemption, adopted late last year, is part of a long saga over how the DOL identifies and regulates non-discretionary investment advice to plans and IRAs, and is colloquially known as “the Fiduciary Rule.”

Prior to this new temporary enforcement policy, all of PTE 2020-02's conditions were set to go into effect this December, meaning, an investment advice fiduciary would have had to ensure that each condition was satisfied to avoid an impermissible self-dealing prohibited transaction. Yet, financial services firms expressed concern that they did not have enough time to do so. Fiduciaries that provide rollover advice, for example, are subject to detailed documentation requirements under PTE 2020-02. Obtaining, synthesizing, and documenting this information was no small feat, and the DOL ultimately agreed that more time was needed.

Under this new temporary enforcement policy:

For the period from **Dec. 21, 2021 through Jan. 31, 2022**, the DOL 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 (as set forth in the exemption) for transactions that are exempted in PTE 2020-02, nor will the DOL treat such fiduciaries as violating the applicable prohibited transaction rules.

The DOL will not enforce the specific documentation and disclosure requirements for rollovers in PTE 2020-02 **through June 30, 2022**. All other requirements of the exemption, however, will be subject to full enforcement as of Feb. 1, 2022.

The DOL's issuance of this temporary enforcement policy provides financial services firms needing breathing space to evaluate the applicability of PTE 2020-02 to their operations and to implement the exemption's conditions, to the extent necessary.

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