



DOL Insights

A recent Department of Labor (DOL) ruling requires insurance agents and brokers to meet certain criteria in order to receive commissions on sales of life insurance and annuities to a qualified retirement plan.

The definition of investment advice fiduciary is changing. Here's what you need to know:

- On April 23, 2024, the U.S. Department of Labor (DOL) released its much-anticipated "Retirement Security Rule," which includes updates to the investment advice fiduciary regulation.
- The new rule requires investment advisers to provide "prudent, loyal, honest advice free from overcharges," and avoid conflicts of interest around investment advice for retirement investors.
- The new rule significantly expands the definition of investment advice fiduciary to capture many more activities that fall under the ERISA fiduciary umbrella.
- The DOL also amended associated Prohibited Transaction Exemptions (PTEs) that apply to conflicted advice and rollover recommendations.
- The new rule and PTE amendments will take effect on September 23, 2024, but there is a one-year phase in period until 2025 for certain conditions.

The DOL significantly expanded the definition of investment advice fiduciary to capture many more activities as fiduciary in nature than under the current Five-Part Test.

The Final Rule defines that you are a fiduciary if:

- You make professional investment recommendations to retirement investors on a regular basis as part of your business;
- You provide those recommendations for a fee or other compensation; and
- One of the following:
 1. You represent or acknowledge that you are acting as an ERISA or Internal Revenue code fiduciary; or
 2. You provide a recommendation under circumstances that would indicate to a reasonable investor that:
 - it is based on review of the retirement investor's particular needs or individual circumstances;
 - it reflects the application of professional or expert judgment; and
 - it may be relied upon by the retirement investor as intended to advance their best interest.



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Changes to PTE 84-24 and PTE 2020-02

The Final Rule also includes updates to PTEs 84-24 and 2020-02.

PTE 84-24: The DOL amended this exemption, which is currently used to sell annuities and insurance products to plans and IRAs. The DOL limited this exemption solely for investment advice provided by **independent producers** selling fixed annuity (including FIAs) and insurance products.

PTE 2020-02: The DOL amended this exemption, which allows compensation in connection with investment advice to plans and IRAs, by adding new conditions and changing certain existing conditions, including strengthening the form of fiduciary acknowledgment and modifying the pre-transaction disclosure requirements.

What happens next?

MMSD will continue to monitor these developments and any additional DOL guidance. The Final Rule and PTEs generally take effect on September 23, 2024, although there is a one-year transition period after the effective date for certain conditions that don't commence until 2025.

Here's an overview of what you can expect from MMSD:

ON OR BEFORE SEPTEMBER 23, 2024

- Fiduciary Acknowledgement: a form addressing this requirement will be incorporated into new business paperwork
- Compliance with duties of care and loyalty.
- Distribute amendments to existing distribution agreements.

ON OR BEFORE SEPTEMBER 23, 2025

- All requirements of PTE 84-24 and PTE 2020-02 take effect on September 23, 2025.
- PTE 84-24 Point of Sale disclosures will be available:
 - Fiduciary Acknowledgement
 - Statement of Care and Loyalty obligation
 - Material facts related to agent relationship, including right to receive additional information regarding compensation.
 - Conflict of Interest disclosure
 - Basis for Recommendation

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