

LEGAL UPDATE



EFFECTIVE DATE

- The final rule and amendments to the PTEs generally take effect on **Sept. 23, 2024**.
- However, there is a one-year transition period after the effective date for certain conditions in the PTEs.
- The initial proposed retirement security rule, which was released in October 2023, was opposed by members of Congress and faced threats of litigation. As a result, plan administrators and service providers should **monitor for potential legal challenges to the final rule** that could affect its effective date.

DOL Issues Final Retirement Security Rule and Related Amendments to PTEs

On April 23, 2024, the U.S. Department of Labor (DOL) issued a [final retirement security rule](#) updating the definition of an investment advice fiduciary for purposes of the Employee Retirement Income Security Act (ERISA). The DOL also separately released amendments to class prohibited transaction exemptions (PTEs) available to investment advice fiduciaries. According to the DOL, the rule and amended PTEs will protect retirement investors by requiring trusted advice providers to follow ERISA's high standards of care and loyalty when making investment recommendations.

Background

ERISA is a federal law governing workplace employee benefit plans, including pension plans, 401(k) plans and other types of retirement savings plans (e.g., individual retirement accounts (IRAs)). ERISA imposes important requirements on "fiduciaries" of these plans, including those who are fiduciaries because they provide investment advice for a fee. Investment advice fiduciaries legally must follow ERISA's strict standards of conduct. Previously, many people who gave investment advice and got paid for it did not fall within this definition.

Key Highlights

The final rule and related PTE amendments detail when advice providers are acting in a fiduciary role under federal pension laws and explain the conditions they must follow to protect retirement investors. Specifically, the rule provides that a financial services provider will be an investment advice fiduciary under federal pension law if:

1. The provider **makes an investment recommendation** to a retirement investor;
2. The recommendation is **provided for a fee or other compensation**, such as commissions; **and**
3. The financial services provider **holds itself out as a trusted adviser** by specifically stating that it is acting as a fiduciary under ERISA, or by making the recommendation in a way that would indicate to a reasonable investor that it is acting as a trusted advisor making individualized recommendations based on the investor's best interest.

In addition, the rule closes the loophole for advice provided on a "one-time" basis by establishing that a financial services provider will be a fiduciary with respect to a recommendation to roll over assets from a workplace retirement plan to an IRA if every element of the fiduciary definition is satisfied.

More Information

The DOL has released a [fact sheet](#) on the final retirement security rule along with a [webpage](#) that includes the PTE amendments and additional resources on retirement investment advice.