



DOL Retirement Security Rule 4.0

Quick-Reference Guide

June 2024

The generalized information within is intended for educational purposes only, and is subject to change before the specified effective date(s). This content is not a substitute for legal or professional advice. Please consult with your firm's legal & compliance team for further detail and guidance specific to your organization.

Background

The U.S. Department of Labor requires fiduciaries to act in the best interest of their clients when giving investment advice for retirement accounts. A new rule going into effect in September 2024 and September 2025* will significantly broaden the scope of what constitutes "investment advice" and heighten the "best interest standard" that that advice is required to meet. Under the updated rule, fiduciaries must:

- **Give prudent advice** that prioritizes the needs of the retirement investor
- **Avoid misleading statements** about conflicts of interest, fees, and investments;
- **Charge no more than what is reasonable** for services; and
- **Give basic information about conflicts of interest** to the retirement investor

Who will this affect?

Financial services providers industry-wide may need to adjust policies or procedures to comply with the update, but the rule updates are targeted primarily at fiduciaries. You are considered a **fiduciary** if:

1. You make an investment recommendation to a retirement investor; **and**
2. Your recommendation is provided for a fee, commission, or other compensation; **and**
3. You hold yourself out as a trusted adviser by
 - a. specifically stating that you're acting as a fiduciary under Title I or II of ERISA; **or**
 - b. making a recommendation in a way that would indicate to a reasonable investor that you're acting as a trusted adviser whose recommendations are individualized and based on the investor's best interest

**The results of a preliminary injunction pending in federal court as of May 2024 may affect the regulations and/or the implementation timeline.*

Changes under DOL Rule 4.0

	Current state (Rule 3.0)	Updates in 2024-'25
Applies to...	Fiduciaries who regularly provide individualized advice or recommendations regarding the value, purchase, and/or sale of securities or property that serves as a retirement investor's primary basis for investment decisions	Fiduciaries who at any time provide individualized advice or recommendations regarding the value, purchase, and/or sale of securities or property that could be reasonably expected to cause, or intend to cause, a retirement investor to take action on or refrain from investing in, purchasing, holding, or selling a retirement investment
Compliance standards	Advice must meet a best interest standard	Advice regarding rollovers & IRAs must meet an enhanced best interest standard
Exceptions	Does not apply to advice about <ul style="list-style-type: none"> • Rolling over assets from a workplace retirement plan • Certain fixed-income products 	Applies to advice about <ul style="list-style-type: none"> • Rolling over assets from a workplace retirement plan • IRAs • Annuities
Disclosure(s)	Fiduciaries must acknowledge their role providing fiduciary advice, and must disclose: <ul style="list-style-type: none"> • Fees & compensation • Scope of services • Conflicts of interest 	Fiduciaries must acknowledge their role providing fiduciary advice, and must disclose: <ul style="list-style-type: none"> • Fees & compensation • Scope of services • Conflicts of interest • Care obligation • Loyalty obligation
Required documentation	Limited	Fiduciaries must document: <ul style="list-style-type: none"> • Justification • Basis for recommendation • Disclosure of conflicts
Oversight	None specified; best practices may include reasonable compliance measures such as training, supervision, & oversight, as well as documentation & recordkeeping of advice, conflicts, & rationale for best interest findings	Advisors may require additional training on fiduciary responsibilities, especially for rollovers & IRA advice Insurers may need to implement additional controls to meet expanded oversight requirements

Changes to PTE 2020-02

	Current state	With proposed amendments
Applies to...	<ul style="list-style-type: none"> • Broker-dealers • Registered investment advisors • Insurance companies, banks, & individuals who act on their behalf 	<ul style="list-style-type: none"> • Broker-dealers • Registered investment advisors • Insurance companies, banks, & individuals who act on their behalf • Robo-advisors
Compliance standards	Advice must meet a best interest standard	Advice must meet a best interest standard, plus standards for: <ul style="list-style-type: none"> • Care obligation • Loyalty obligation
Exceptions	Fiduciaries can be disqualified for 10 years if they: <ul style="list-style-type: none"> • Are convicted of certain crimes related to investment advice for retirement investors • Are engaged in systematic or intentional violation of PTE's conditions • Provide info that materially misleads DOL regarding conduct under the exemption 	Fiduciaries can be disqualified for 10 years if any of the existing reasons for disqualification apply to the investment professional, the financial institution, OR a member of the financial institution's controlled group (including offshore affiliates)
Disclosure(s)	Fiduciaries must acknowledge their role providing fiduciary advice, and must disclose: <ul style="list-style-type: none"> • Conflicts of interest • Basis for recommendation, including why it is in the best interest of the investor 	Fiduciaries must acknowledge their role providing fiduciary advice, and must disclose: <ul style="list-style-type: none"> • Conflicts of interest • Basis for recommendation, including why it is in the best interest of the investor • Fees & compensation • Scope of services
Policies & procedures	None specified	Must have policies & procedures in place (which can be provided to DOL upon request) that demonstrate compliance with regulations regarding incentive programs that could influence advice against a client's best interest

Oversight	Financial institutions must ensure their agents & advisors comply with PTE 2020-2 conditions when recommending the firm's annuities or insurance products	Financial institutions must: <ul style="list-style-type: none">● Cooperate with compliance efforts (e.g., by providing information or training materials), and● Ensure adequate policies & procedures are in place to prevent violations by agents recommending their products, and● Implement oversight programs to monitor agent activities & identify potential compliance issues, and● Certify that all excise taxes associated with any non-exempt prohibited transactions have been filed & paid
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Changes to PTE 84-84

	Current state	With proposed amendments
Applies to...	Independent producers who recommend annuities & certain insurance products (not securities)	Independent producers who act as investment advice fiduciaries to recommend annuities & certain insurance products (not securities)
Compliance standards	None specified	Advice must meet impartial conduct standards, including: <ul style="list-style-type: none"> ● Care obligation, and ● Loyalty obligation, and ● Reasonable compensation, and ● Avoiding misleading statements
Exceptions	Advice is exempt if: <ul style="list-style-type: none"> ● Recommendation meets suitability standard ● Compensation is reasonable ● No misleading statements are made 	Advice is exempt if: <ul style="list-style-type: none"> ● Recommendation meets suitability standard, and ● Recommendations meet impartial conduct standards (see above), and ● Appropriate disclosures are provided to IRA owner (see below)
Disclosure(s)	To an independent fiduciary, fiduciaries must acknowledge their role providing fiduciary advice, and must disclose: <ul style="list-style-type: none"> ● Fees & compensation ● Scope of services ● Conflicts of interest 	To the IRA owner directly , fiduciaries must acknowledge their role providing fiduciary advice, and must disclose: <ul style="list-style-type: none"> ● Fees & compensation in greater detail, and ● Scope of services, and ● Conflicts of interest
Oversight	Limited; may involve reviewing agent qualifications or sales materials related to the exemption	Financial institutions must: <ul style="list-style-type: none"> ● Ensure that the firm's independent producers understand & comply with the amended PTE 84-24 requirements (including "impartial conduct" standards), and ● Implement oversight programs to monitor the activities of independent producers who rely on the exemption

Obligations of industry professionals

	Insurance Agents	Registered Representatives	Investment Advisor Representatives
Expected effects	Significant	Moderate	Minimal
Clients/ serviced firms	BGAs, IMOs, MGAs	FINRA-registered broker dealers	SEC-registered investment advisors State-registered investment advisors
Existing standard(s)	Suitability standard Best Interest standard (NY only)	Suitability standard Best Interest standard	Fiduciary (Best Interest) standard
Under Rule 3.0	Under no legal obligation to act in the client's best interest Required to disclose compensation (NY only) May earn commissions Eligible for sales incentives/bonuses	Required to meet Suitability standard; required to meet Best Interest standard only with certain accounts Required to disclose compensation and conflicts of interest Subject to existing rules regarding sales incentives	Required to act in client's best interest Required to document & disclose compensation & conflicts of interest Subject to existing rules regarding sales incentives
Changes under Rule 4.0	Must ensure client best interest is prioritized over sales, & document the basis for recommendation Must begin documenting & disclosing compensation & conflicts of interest May be affected by modifications to compensation structures & other incentives	May need to update disclosures May be affected by modifications or limits to compensation structures	May need to update disclosure procedures

Insurer assessment checklist

General policies & procedures

Do you have controls in place to ensure and enforce compliance?

Existing customers/clients

How will the new rule affect your current customers/clients? Will you need to enhance your communications or disclosures with that audience?

Conflicts of interest

How can conflicts of interest be reduced? How will conflicts be disclosed to retirement investors?

Disclosure policies & procedures

How will fiduciaries inform retirement investors of potential conflicts of interest, compensation, affiliations, scope of relationship, etc.? How will they acknowledge their fiduciary status in writing?

Oversight policies & procedures

Where there are obligations to do so, how will you supervise? Do you have the data and reporting necessary to provide strong oversight? How will you oversee the basis for recommendation and address potential concerns? What reports do you need in order to fulfill your supervision obligations? How will you provide evidence of that supervision?

Documentation

How will fiduciaries capture and record the basis for the recommendation and/or reasons for a rollover recommendation?

Forms & systems

Do you anticipate impacts to your systems, forms, or workflows to meet updated requirements for disclosures and documentation?

Education & training

Do fiduciaries understand where their fiduciary obligations or a PTE applies? Do they understand the impact of this update to their marketing and their disclosure obligations? Do they understand the insurer's policy?

Compensation

Do you anticipate impacts to your compensation structure, including sales incentives or sales contests?

Contracting

Do you anticipate impacts to your existing selling agreements, agency agreements, and/or agent contracting paperwork?

Marketing

How are you ensuring that your marketing does not provide a retirement investment recommendation?