



The 2024 Retirement Security Rule was Officially Vacated

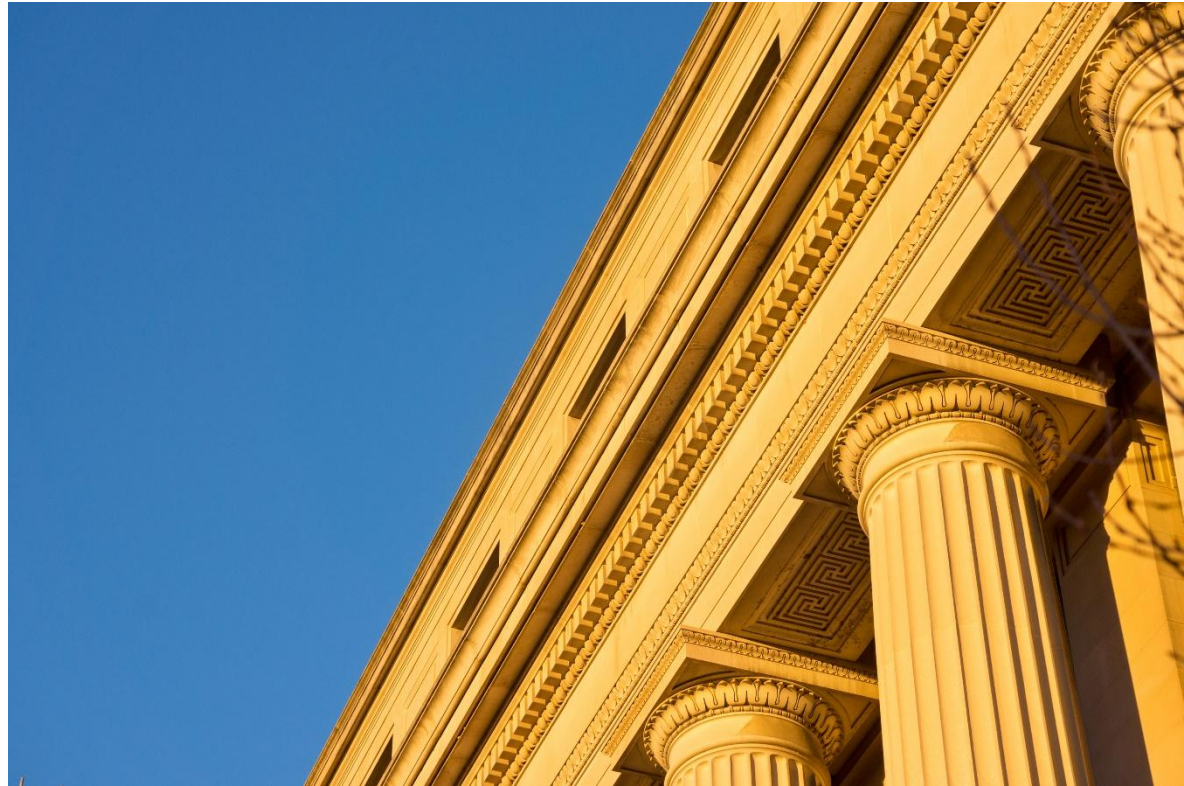
Because the rule never went into effect, no changes are required.

DOL Republished “Operative Text” of PTE 2020-02

It confirmed the PTE is still applicable and enforceable with caveats.

Big Takeaway

DOL indicated no future rulemaking is planned on the fiduciary definition; a higher degree of certainty provides the opportunity to reevaluate compliance strategy - particularly for plan-to-IRA rollovers.



Final Rule Concerning Vacatur(s): Technical & practical implications for RIAs, banks & broker-dealers

As part of implementing the recent vacatur of the Retirement Security Rule (a.k.a. the 2024 Fiduciary Rule), the DOL republished its 1975 regulation defining the term “investment advice” for purposes of determining fiduciary status under ERISA and the Internal Revenue Code. It also confirmed PTE 2020-02 is still applicable and enforceable, subject to a partial vacatur that was the focus of a PRI Member Roundtable back in May of 2023 (and our consultations with member firms since that time).

While nothing has changed from a technical perspective since 2023, the practical impact of the DOL’s assurance that it does not plan to reopen formal rulemakings for both the fiduciary definition and PTE 20-02 provides firms with an opportunity to reexamine their approach concerning plan-to-IRA rollover compliance requirements.

The DOL recently republished its 1975 regulation on “investment advice” and the original text of PTE 20-02, confirming the PTE is still on the books and enforceable. It also stated there are “no current plans” to engage in formal rulemaking on these issues but left the door open to additional guidance. The result is a period of regulatory stability that provides firms with the opportunity to fine-tune compliance strategies. By covering only what it required, firms can avoid the additional time and risk of over-complying – resulting in an outcome PRI has termed “optimal” compliance.

Specifically, the “final rule; technical amendment” addresses two issues:

1. It implements the vacatur of the Retirement Security Rule (“RSR”) by two federal courts in early-March, confirming the 1975 investment advice regulation (a.k.a. the five-part test) controls for the foreseeable future; and
2. Confirms the “operative text” of PTE 2020-02 can be relied upon but dispenses with the guidance set forth in its preamble.

Impacts by Issue

No. 1: Because the Retirement Security Rule (RSR) never went into effect, the fact that it was formally vacated last month means that nothing has changed – at least from a technical perspective. Investment professionals (and their firms) must still satisfy the “five-part test” from the 1975 regulation for their communications to be



considered fiduciary advice under ERISA and the Internal Revenue Code; the advice must relate to the value or advisability of investing in securities or property, be

delivered on a regular basis, pursuant to an understanding, that such advice will serve as a primary basis for the retirement investor’s decisions, and be individualized based upon their needs. From a practical perspective, however, the DOL’s statement that it does not intend to engage in further rulemaking on the definition of investment advice is significant.

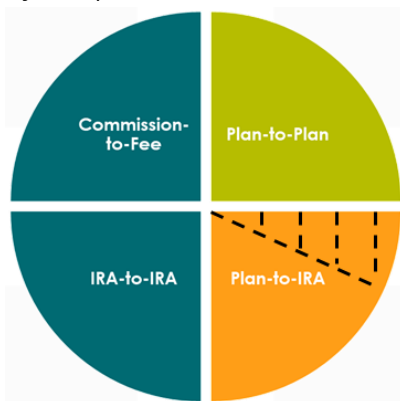
No. 2: PTE 20-02 is still in effect and enforceable, with caveats.

As we discussed in several PRI Member Roundtables, the preamble to PTE 20-02 included a controversial interpretation that was litigated, leading to a partial vacatur (in 2023) focused on that portion of the PTE. According to the preamble, a one-time recommendation to roll over an ERISA plan account to an IRA would have been considered the first instance of fiduciary advice if the financial professional, or his/her firm (or any affiliate), would be providing “regular basis” advice on (or exercise discretion over) investments in the IRA. The court found that interpretation was arbitrary and did not align with the plain meaning of the advice regulation because a regular basis relationship could not be established between two different “plan” types (i.e., a 401(k) plan and an IRA).

At the time, the RSR would have soon redefined the term investment advice to encompass one-time rollover recommendations such that most firms kept their current policies in place. They continued to require compliance with the PTE conditions for all recommended rollovers. Now that the RSR has been officially vacated, it may make sense to reevaluate those policies.

As previously mentioned, the DOL republished the “operative text” of PTE 20-02 in March 2026 but did not include the preamble. According to the DOL, the partially vacated interpretation was so interrelated with “matters and guidance in other portions of the preamble to such an extent that the [DOL] is no longer confident in the soundness of the remaining portions of the preamble.”

It is worth reiterating that the partially vacated portion of the PTE's preamble only relates to rollovers from ERISA plans to IRAs where no pre-existing ERISA fiduciary relationship exists with the participant. The graphic below is intended to illustrate that PTE 20-02 covers four types of rollovers and/or transfers and that only a portion of one of the four types (plan-to-IRA) was affected by the partial vacatur.



It is also important to note that one can establish an ERISA fiduciary relationship without having any direct connection with or receiving compensation

from the plan or participant's account.

Compensation such as financial planning or wealth management fees received in connection with other (even taxable) accounts will suffice to confer fiduciary status if you provide advice on a regular basis to a participant concerning his/her plan account that satisfies the five-part test.

Why it Matters

By "effectively vacating" the preamble to PTE 20-02, the DOL has communicated to the regulated community that it will not seek to enforce PTE compliance with recommended rollovers from an ERISA plan to an IRA absent a pre-existing ERISA fiduciary relationship with the participant. The DOL's clarification of its position is important because the PTE conditions present additional risk - by design. Because DOL lacks the resources to oversee tens of thousands of financial institutions, it embedded requirements in the PTE that allow other regulators and even clients to facilitate compliance.

For example, banks, broker-dealers and RIAs are required to provide advice that is in their client's best interest, but they are not obligated to

acknowledge fiduciary status under ERISA or the Code. Primary regulators also do not require firms to, among other things, deliver written disclosures to clients setting forth the "particular reasons" they believe their recommendations are in the client's best interest, conduct retrospective reviews, pay excise taxes, etc. These requirements require additional time and resources and can present additional risk.

From a regulatory perspective, the PTE conditions require firms to adopt specific policies and procedures, and any agency can enforce a failure to comply with your own policies, irrespective of which regulator or regulation required them to be in place. Additionally, inadvertent errors in the PTE-required rollover disclosure (e.g., understating IRA fees or overstating plan fees) could be viewed as misleading statements and, thus, violating SEC, FINRA, or OCC rules. At the client level, the PTE requirement to acknowledge the advice is provided pursuant to the highest standard of care under the law creates an otherwise unnecessary hurdle to overcome in litigation or arbitration.

PRI Support

While most regulators require you to put your client's interests ahead of your own, the prohibited transaction rules in ERISA and the Code impose per se liability. This means that - no matter how well intentioned you were or even how great of an outcome your client had - if you fail to comply with all of the conditions of a PTE, you must (at a minimum) disgorge all compensation received (plus interest) from the inception of the transaction. Under compliance is, therefore, not an option.

On the other hand, where PTE compliance is not required, firms need only comply with their primary regulators' requirements. And if firms can determine with certainty that they do not have a pre-existing ERISA fiduciary relationship, they can develop policies and workflows to avoid unnecessarily submitting to the PTE

conditions for rollovers from plans to IRAs. For larger institutions, however, the ability to do so often comes down to technology that allows firms to “toggle” their client-facing output while keeping their financial professionals’ workflow and internal documentation intact.

As always, PRI will be monitoring developments and update you accordingly. Please give us a call or email info@pension-resources.com with questions or to schedule a time to discuss how these changes affect your firm.