

DOL Fiduciary Rule and Prohibited Transaction Exemption Compliance Date is Approaching

June 16, 2022

Beginning July 1, 2022, retirement investment providers that provide fiduciary rollover advice must document and disclose to the customer the specific reasons that the rollover to a plan or an individual retirement account ("**IRA**") is in the "best interest" of the customer. Investment providers that make such rollover recommendations must comply with Prohibited Transaction Exemption 2020-02 (the "**Exemption**") in order to retain investment related fees generated from that advice without running afoul of ERISA's prohibited transaction rules. In general, advice is in a customer's "best interest" if it is both prudent and loyal, and does not place the financial or other interests of the investment provider or financial institution ahead of the interests of the customer.

As part of the rollover documentation and disclosure to customers, the following factors should be considered: (i) the customer's alternatives to a rollover, including leaving the money in the plan, if permitted, and selecting different investment options; (ii) the fees and expenses associated with the plan or IRA; (iii) whether the employer pays for some or all of the plan's administrative expenses; and (iv) the different levels of services and investments available under the plan or IRA. As part of this analysis, fiduciaries should make diligent and prudent efforts to obtain information about the existing plan and the customer's interests in it, including requesting and reviewing the participant's fee disclosure documents.

This is the second of three compliance dates under the Exemption. Earlier this year, investment fiduciaries utilizing the exemption were required to disclose their fiduciary status to participants or IRA owners engaging in a rollover, adopt relevant procedures, and comply with the DOL's "impartial conduct standards." Further, beginning next year, the Exemption also requires an annual retroactive review of any transactions covered by the Exemption. As the DOL indicated that it plans to provide further guidance regarding the Exemption, we will continue to monitor developments in this area.

The Exemption is available [here](#).