

Final Compliance Deadline for the DOL Fiduciary Rule and Prohibited Transaction Exemption is Approaching

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PRACTICES ERISA and Other Benefits Litigation, Retirement Plans, Employee Benefits and Executive Compensation

As we previously reported [here](#), retirement investment providers that provide fiduciary investment advice to participants of ERISA covered plans or to owners of individual retirement accounts (“**IRAs**”) must comply with Prohibited Transaction Exemption 2020-02 (the “**Exemption**”), in order to retain certain investment related fees generated from that advice without running afoul of ERISA’s prohibited transaction rules. The final compliance deadline requiring the completion of an annual retrospective review report of any transactions covered by the Exemption from the prior year must be completed no later than six months following the end of such annual period (i.e., by June 30, 2023 for 2022 transactions).

As background, beginning in 2022, investment fiduciaries utilizing the Exemption were required to disclose their fiduciary status to participants or IRA owners, adopt relevant procedures, comply with the DOL’s “impartial conduct standards,” and document and disclose to the customer the specific reasons that a rollover is in the “best interest” of the customer. Advice is considered in a customer’s “best interest” if it is both prudent and loyal, and it does not place the financial or other interests of the investment provider or financial institution ahead of the interests of the customer. Further, the “impartial conduct standards” generally require that the advice is provided in the customer’s “best interest” for reasonable compensation and absent any materially misleading statements.

For 2023 and annually thereafter, the Exemption also requires an annual retrospective review report of any transactions covered by the Exemption certified by a senior executive officer of the financial institution providing the investment advice, no later than six months following the end of the relevant annual period. The report and any supporting data are subject to a six-year retention requirement and must be made available to the DOL upon request generally within ten business days of such request.

The DOL’s interpretation of fiduciary investment advice is an evolving area which continues to be the subject of litigation as we reported [here](#). Further, the DOL has indicated that it plans to provide further guidance, and therefore, we will continue to monitor developments in this area.

The Exemption is available [here](#).