

2023 DEPARTMENT OF LABOR “RETIREMENT SECURITY RULE”

Frequently Asked Questions about the Proposed Rule

The [Department of Labor \(DOL\)](#) unveiled its proposed “[Retirement Security Rule](#)” ([Proposed Rule](#))¹ redefining who is an investment advice fiduciary under the [Employee Retirement Income Security Act \(ERISA\)](#) on October 31, 2023. The Proposed Rule is the DOL’s fourth attempt to change its rules to treat financial service professionals more broadly as ERISA fiduciaries when providing individualized investment advice to retirement investors for compensation.

Below is a list of frequently asked questions based on the Proposed Rule. Hearings for this rule were held in December 2023, and the comment period ended on January 2, 2024. We currently are waiting on the DOL to finalize the Proposed Rule. Until then, the following information can help you understand the potential impact the proposal may have on your business—and how Pacific Life can help.

What does the new Proposed Rule require of financial professionals?

The 2023 DOL Proposed Rule attempts to redefine an ERISA fiduciary and amends certain already-existing Prohibited Transaction Exemptions (namely, [PTE 84-24](#) and [PTE 2020-02](#)). Specifically, it more broadly treats financial service professionals as ERISA fiduciaries when providing individualized investment advice to retirement investors for compensation. IRA rollover advice is specifically included in the regulation as a form of fiduciary advice.

How is this proposal different than what was proposed in 2016?

The 2023 Proposed Rule appears to share many similarities with the 2016 DOL Fiduciary Rule, but there is one notable difference: The 2023 Proposed Rule does not specifically include exemptions or carve-outs for fiduciary investment advice of any sort. However, this did exist with the 2016 DOL Fiduciary Rule in the form of advice given to sophisticated investors (i.e., plans with \$50 million or more), for example.

Who does this proposal primarily affect?

The 2023 Proposed Rule focuses primarily on [Individual Retirement Account \(IRA\)](#) rollovers. Financial professionals already acting as ERISA fiduciaries will not necessarily experience a significant impact. These individuals already may comply with most of, if not all, the requirements. However, financial professionals who provide investment advice and were not previously recognized as fiduciaries will be significantly affected due to, among other things, required changes to their current processes and increased overall costs of doing business. Arguably, this could result in consumers and retirement investors losing access to educational materials, investment advice, and various product options.

¹Published in the Federal Register November 3, 2023. Retirement Security Rule: Definition of an Investment Advice Fiduciary, 88 Fed. Reg. 75890 (November 3, 2023).

What is the process for the 2023 DOL Proposed Rule to become final?

On October 31, 2023, the DOL released the 2023 Proposed Rule and subsequently published the proposal in the Federal Register on November 3, 2023, which started the 60-day comment period window. While a comment period extension was quickly requested by the industry, this was not granted. A public hearing was scheduled for December 12, 2023 through December 13, 2023, with comments due by January 2, 2024. Depending on how long it takes for DOL to review the submitted comments and finalize the 2023 DOL Proposed Rule, the current implementation period is only 60 days from when the rule becomes final.

When will this proposal become final?

How quickly the rule will go into effect is not known at this time. The timing will depend on how long it takes the DOL to review the comments. Whether or not the rule is paused while any litigation proceeds would be determined by the court system.

What should I do differently today, pending the final rule?

Your firm will make you aware of any changes in your processes. They also will be your best source of information about how the 2023 Proposed DOL Rule might specifically affect you.

Does Pacific Life have any educational materials that may help prepare me or my clients for IRA rollover conversations?

Remember, your firm is always the best place to get information on processes and procedures, but we can help too. Pacific Life has several brochures to assist in preparing you for these conversations, and we also provide educational materials to help clients better understand their options. Be sure to reach out to your consultative Pacific Life wholesaler to request the resources you and your clients need.

For more information about the 2023 Department of Labor “Retirement Security Rule,” please contact the Retirement Strategies Group at RSG@PacificLife.com or (800) 722-2333, ext. 3939.
Annuities.PacificLife.com

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