



## DEPARTMENT OF LABOR (DOL) FIDUCIARY RULE PROPOSAL

The Department of Labor (DOL) has released a follow-up to the 2016 fiduciary rule that was vacated in 2018. On June 29, 2020, the DOL issued a new proposed rule (Proposal).

The DOL initially issued a fiduciary rule in 2016; although supported by many groups, the rule came under fire by many, including the Chamber of Commerce, the Financial Services Institute, and others. The fiduciary rule was vacated by the U.S. Fifth Circuit Court of Appeals in March 2018. The DOL then issued Field Assistance Bulletin (FAB) 2018-02 in May 2018, which provided only temporary relief, which was a framework for financial professionals to rely on to determine whether or not they were fiduciaries.

The DOL intends the Proposal to provide a more permanent solution and to reduce confusion as to what type of advice and under which circumstances a financial professional may be covered by the exemption outlined below.

On June 29, 2020, the DOL issued a proposed rule (Proposal) to allow “investment advice fiduciaries” to receive compensation that was previously prohibited.

The Proposal, among other things, would:

- Reinstated the Employee Retirement Income Security Act of 1974 (ERISA) “five-part test” to determine whether a person is a “fiduciary” by reason of providing “investment advice” for a fee or other compensation (direct or indirect).
- Create the Prohibited Transaction Exemption (PTE) which allows investment advice fiduciaries flexibility on investor choices while also receiving various types of compensation (including commissions), as long as the “Impartial Conduct Standards” are followed.
- Confirm that financial professionals providing “rollover” advice are to be considered fiduciaries subject to the new PTE.

Insurance products are issued by Pacific Life Insurance Company in all states except New York and in New York by Pacific Life & Annuity Company. Product availability and features may vary by state.

---

## Key Provisions

- The reinstated ERISA standard, referred to as the “five-part test” does not differentiate between brokers, registered investment advisors (RIAs), or any other types of institution. Simply put, advice for a fee or other compensation (direct or indirect) is fiduciary advice, if it is:
  1. Advice as to the value of securities or other property, or making recommendations as to the advisability of investing in, purchasing, or selling securities or other property.
  2. Provided on a regular basis.
  3. Pursuant to a mutual agreement, arrangement, or understanding with the plan, plan fiduciary, or IRA owner/plan participant that:
    - a) The advice will serve as a primary basis for investment decisions with respect to plan or IRA assets.
    - b) The advice will be individualized based on the particular needs of the plan or IRA.
- The new PTE allows fiduciaries to provide advice and receive compensation as long as they comply with the “Impartial Conduct Standards,” which are:
  1. Act in the client’s “best interest.”
  2. No more than reasonable compensation.
  3. No materially misleading statements.

**Note: Unlike the 2016 rule, the proposed PTE requires only that a fiduciary not place his/her interests ahead of the interests of the investor (plan, IRA, or participants).**

- Rollover advice can be considered an ongoing relationship between client and financial professional with anticipation of a future ongoing relationship. The DOL proposal clarifies that rollover advice is considered “investment fiduciary advice” and is subject to the new PTE.

## Conclusion

The DOL Proposal provides clarification that allows financial professionals to receive compensation for services rendered as long as they comply with the impartial conduct standards. Under the Proposal, a retirement investor would not be able to sue a financial professional or financial institution. Pacific Life is evaluating the Proposal to determine impacts to our consumers, financial professionals, and the industry as whole. Financial professionals are encouraged to consult with their broker/dealers and independent legal advisors for additional information.

The DOL Proposal was published in the Federal Register on July 7, 2020, and is open for public comments, which are due by August 6, 2020. After reviewing comments, the DOL could modify the Proposal and then promulgate a final rule. This process could take months.

## Additional Information and Links

**Reference:** For more information, please see the [DOL/Employee Benefit Security Administration](#)

---

Should you have any questions regarding the DOL proposed fiduciary rule, please contact the Retirement Strategies Group at (800) 722-2333, ext. 3939, or email us at [RSG@PacificLife.com](mailto:RSG@PacificLife.com).  
[PacificLife.com](http://PacificLife.com)

---

This material is provided for informational purposes only and should not be construed as investment, tax, or legal advice. Information is based on current laws, which are subject to change at any time. Clients should consult with their accounting or tax professionals for guidance regarding their specific financial situations.

VLCI881-0920W

3 of 3

**This material is educational and intended for an audience with financial services knowledge.**

---



THE OFFICIAL SPONSOR  
OF RETIREMENT™