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What's Old is New Again: The DOL's 1975 Investment Advice Fiduciary Rule Five-Part Test is Officially Back and Here to Stay (For Now)

Compensation & Benefits on **March 23, 2026**

On March 20, 2026, the U.S. Department of Labor ("**DOL**") published guidance (the "**2026 Guidance**") that formally reinstates the DOL's original 1975 five-part test (the "**Five-Part Test**") for purposes of determining whether a person is a "fiduciary" under the U.S. Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), or Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), by way of providing "investment advice" with respect to the "plan assets" of an ERISA plan or an individual retirement account (an "**IRA**"). For over 15 years now, the DOL has unsuccessfully been trying to expand what it means to provide "investment advice" for these purposes, in particular as applicable to IRA rollover advice. The 2026 Guidance formalizes the recent judicial vacatur of the DOL's latest failed attempt.

Background

Under Section 3(21) of ERISA and Section 4975(e) of the Code, a person is considered a "fiduciary" with respect to an ERISA plan or an IRA if (among other things) the person renders "***investment advice***" for a fee or other compensation, direct or indirect, or has any authority or responsibility to do so.

Under the Five-Part Test, a person is considered to be providing "investment advice" for these purposes only if the person: (1) renders advice to the ERISA plan or IRA as to the value of securities or other property, or makes recommendations as to investing in, purchasing or selling securities or other property, (2) on a regular basis, (3) pursuant to a mutual agreement, arrangement, or understanding with the ERISA plan, the ERISA plan fiduciary or the IRA owner that, (4) the advice will serve as a primary basis for investment decisions with respect to the ERISA plan's or IRA's assets, and (5) the advice will be individualized based on the particular needs of the ERISA plan or IRA. All five narrow prongs of the test must be met in order for advice to be considered "investment advice."

Relatedly, Section 406(b) of ERISA and Section 4975(c) of the Code generally prohibit investment advice fiduciaries from receiving compensation that varies based on their investment advice, unless the conditions of an available exemption are satisfied. The DOL has previously issued prohibited transaction class exemptions (including Prohibited Transaction Class Exemption 2020-02 ("**PTCE 2020-02**") issued in 2020) covering certain common transactions that would provide relief to investment advice fiduciaries for certain otherwise prohibited compensation arrangements.

DOL's Failed Attempts

For over 15 years, the DOL has published various proposed and final regulations, and subregulatory guidance, to revise or replace the Five-Part Test so as to broaden what it means to be providing fiduciary investment advice, in particular as related to IRA rollover advice (for more of the history, see here, here, here, here and here). However, each iteration of the rule has been vacated by a court or withdrawn, so little progress has been made. For example, in the preamble to PTCE 2020-02 and in a set of FAQs released by the DOL related thereto, the DOL effectively attempted to revise the Five-Part Test by providing its broadened interpretation of certain aspects of the Five-Part Test. However, a Federal District Court later vacated that broadened interpretation.

2024 Guidance

In April 2024, the DOL issued final regulations that replaced the Five-Part Test with a much broader rule regarding what it means to provide fiduciary "investment advice" (the "**2024 Fiduciary Rule**"). As part of the package, the DOL also amended certain prohibited transaction class exemptions, including PTCE 2020-02, to reflect the changes being made under the 2024 Fiduciary Rule (the "**2024 PTCE Amendments**"). The 2024 Fiduciary Rule and the 2024 PTCE Amendments were set to become effective in September 2024.

However, the 2024 Fiduciary Rule and the 2024 PTCE Amendments were challenged in court, and ultimately the effective dates of the 2024 Fiduciary Rule and the 2024 PTCE Amendments were stayed by two District Courts in Texas prior to becoming effective. Although litigation ensued and the DOL initially challenged the stays, the DOL recently dropped its appeal and final judgment was entered vacating the 2024 Fiduciary Rule and the 2024 PTCE Amendments.

2026 Guidance

Since the 2024 Fiduciary Rule and the 2024 PTCE Amendments never actually became effective, the Five-Part Test and PTCE 2020-02 remained operative and intact as initially published (other than the judicially vacated portion of the preamble to PTCE 2020-02 relating to the DOL's interpretation of the Five-Part Test). The 2026 Guidance formally implements the judicial vacatur of the 2024 Fiduciary Rule and reinstatement of the Five-Part Test, and republishes in full the operative text of PTCE 2020-02 as originally published in 2020. However, the DOL has officially removed the entirety of the preamble to PTCE 2020-02 given that portions of it had already been judicially vacated and the fact that the guidance in that preamble was no longer reliable in light of being based on rules that were ultimately vacated.

Going Forward

After all of the back and forth, we are once again back where we started – the Five-Part Test and PTCE 2020-02 (other than the removed preamble) remain operative and intact as initially published. That being said, we do not believe this is the end of the saga: we expect additional proposals at some point in the future.

Related Professionals

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