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Getting ready for the DOL's Retirement Security Rule[1] and amendments to PTEs

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On April 23, 2024, the Department of Labor (DOL) released the Retirement Security Rule (the "Rule"), with a revised definition of an investment advice fiduciary, along with amendments to prohibited transaction exemptions (PTEs), including PTE 2020-02 and 84-24. Below are five impacts and five action steps for firms to consider taking now.

5 Rule and amended PTE key impacts

An umbrella fiduciary standard for retirement investment advice: The Rule establishes an umbrella fiduciary standard for retirement investment advice. The current regulatory landscape already has multiple fiduciary or best interest standards (e.g., Reg BI, the Investment Advisers Act of 1940 and state insurance regulations). However, no single standard applies across the spectrum of recommendations made to retirement investors.

One-time advice, including rollover advice, will be fiduciary advice: The Rule broadens the definition of fiduciary advice to include one-time advice, most notably one-time rollover advice. Various other types of one-time advice will also be covered, like a one-time recommendation to a plan to purchase a group annuity.

Consolidation of PTEs & the prominence of PTE 2020-02: The DOL amended PTEs 75-1, 77-4, 80-83, 83-1, and 86-128 to remove coverage for fiduciary investment advice. Further, PTE 84-24 has been amended to narrow its coverage to investment recommendations of non-security annuities made by independent agents. These changes establish PTE 2020-02 as the exemption most available for fiduciary investment advice. The conditions of PTE 2020-02 have also changed, and its coverage has expanded to include robo-advisor investment advice.

PTE 84-24 will disrupt the independent agent model: With the amendments to PTE 84-24, independent agents selling non-security annuities will be fiduciaries and will need to acknowledge their status as such, upending current business models. Independent agents will need to comply with conditions for which they do not have the infrastructure, such as the Impartial Conduct Standards (ICS). Insurers who underwrite the annuities that independent agents sell should consider how they may help provide such infrastructure. Further, while insurers will not assume fiduciary status under PTE 84-24, they must provide oversight of independent agent sales practices.

Challenging compliance timeline: The Rule and exemptions become effective and applicable on September 23, 2024, with a phase-in period of one year from the effective date for some exemption conditions. This gives firms only a matter of months to assess the impacts to their business models and design and implement changes for compliance.

5 action steps to consider taking now

1 **Evaluate the Rule & PTEs for opportunities to harmonize fiduciary / best interest standards:** Many firms have already implemented fiduciary / best interest standards. Firms should consider leveraging what they have already implemented to streamline and harmonize workflows across different business lines and product offerings.

2 **Identify & evaluate compliance strategies for one-time advice & education-only practices:** Current one-time advice and education-only practices may be fiduciary advice under the Rule, and firms should assess their compliance strategies versus the regulatory risk of such practices, in particular for rollovers.

3 **Evaluate exemption strategies:** Firms should pressure test compliance with the amended PTE 2020-02, as it may be the only PTE available for many business models. Firms currently relying on PTE 84-24 also may need to shift to PTE 2020-02, requiring changes to operating models, compliance and training programs. And with the amendments to PTE 84-24, independent insurance agents may need to adopt an exemption strategy for the first time, potentially requiring coordination with insurers and independent marketing organizations.

4 **Assess compensation & conflicts:** Firms should consider taking inventory of the direct and indirect compensation and incentives that they, their affiliates, employees and representatives receive as a result of investment advice given to retirement investors. Firms should also consider evaluating the conflicts associated with compensation and incentive structures and decide if and how the structures may need to change, given the Rule and amended PTEs. Note this exercise may be of particular importance for the independent agent model, given the need to comply for the first time with the amended conditions of PTE 84-24.

5 **Stand up a cross-functional team:** Legal challenges to the Rule may take years to play out. Firms therefore should consider assembling a team now to develop a timeline and identify and plan for the key activities and decisions that they will need to tackle between now and September 23, 2024. The above action steps provide a place to start.

[1]Retirement Security Rule: Definition of an Investment Advice Fiduciary, [2024-08065.pdf (govinfo.gov)]

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