

CLIENT ALERT

DOL Retirement Security Rule and PTE Amendments Stayed by Texas Courts

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Courts in the Eastern and Northern Districts of Texas (together, the “Courts”) have stayed indefinitely the U.S. Department of Labor’s (the “DOL”) newly adopted Retirement Security Rule (the “Rule”)¹ and amendments to various Prohibited Transaction Exemptions (the “PTEs”)² after industry trade groups brought two separate lawsuits seeking to block the Rule and related PTE Amendments. As adopted, the Rule sought to expand the definition of “fiduciary” when a person renders investment advice for purposes of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and parallel provisions of the Internal Revenue Code of 1986, as amended (the “Code”). Specifically, the Rule and PTE Amendments sought to expand the definition of an investment advice fiduciary under ERISA and Section 4975 of the Code to capture one-time rollover advice to participants in ERISA plans and individual retirement accounts (“IRAs”), sales of insurance products to such investors, and to prioritize investment advice fiduciaries’ reliance on PTE 2020-02 to receive otherwise prohibited compensation.³

¹ See Retirement Security Rule: Definition of an Investment Advice Fiduciary, 89 Fed. Reg. 32,122 (Apr. 25, 2024) (the “Final Rule Release”), available [here](#).

² See Amendment to Prohibited Transaction Exemption 2020-02, 89 Fed. Reg. 32,260 (Apr. 25, 2024) (the “PTE 2020-02 Amendment”), available [here](#); Amendment to Prohibited Transaction Exemption 84-24, 89 Fed. Reg. 32,302 (Apr. 25, 2024) (the “PTE 84-24 Amendment”), available [here](#); Amendments to Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, and 86-128, 89 Fed. Reg. 32,346 (Apr. 25, 2024), available [here](#) (and together with the PTE 2020-02 Amendment and the PTE 84-24 Amendment, the “PTE Amendments”).

³ Willkie previously published client alerts detailing the current state of regulatory guidance on PTE 2020-02 and on the now-stayed changes to the definition of an ERISA investment fiduciary and the various PTEs as enacted before the stay. See Willkie Client Alert, U.S. Department of Labor

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The two Texas cases were filed in May shortly after the Rule and the PTE Amendments were adopted.⁴ The Eastern District Court considered a request to enjoin and vacate the Rule and the changes to PTE 84-24, where the plaintiffs claimed these changes would in many cases unduly burden insurers and their agents with investment advice “fiduciary” obligations under ERISA and Section 4975 of the Code and impose significant regulatory and recordkeeping responsibilities that could lead parties to exit the market. The Northern District Court considered a request to enjoin and vacate the Rule and all of the PTE Amendments.⁵ In granting their respective stay orders, which now cumulatively stay the Rule and all of the PTE Amendments, the Courts reasoned that the Rule and the PTE Amendments were likely unduly burdensome, likely exceeded the DOL’s authority under both Title I and Title II of ERISA, or were otherwise likely preemptively enjoined by precedent.⁶ Notably, the Courts’ orders stay the Rule and the PTE Amendments for the financial services industry as a whole, not just the parties in the Eastern and Northern District cases, in consideration of the Rule’s and PTE Amendments’ potential effects on industry actors. The Eastern District Staying Opinion also cited to the United States Supreme Court’s recent *Loper Bright* case overruling *Chevron* deference in justifying its reasoning, potentially signaling the judiciary’s increased willingness to actively assess regulatory interpretations and legal actions in the future.⁷

The Courts’ stay orders will conclude upon resolution of these two cases, which seem likely to resolve in the plaintiffs’ favor. Although the ultimate fate of these cases is unclear and it remains uncertain whether the DOL will appeal the stay orders, the definition of an investment advice “fiduciary” under ERISA and Section 4975 of the Code has, for now, reverted back to the “five-part test” under a regulation initially published by the DOL in 1975 (the “1975 Regulation”).⁸ The 1975 Regulation emphasizes that one of the key elements of being an investment advice fiduciary involves ongoing, repeated contact between investment advice providers and their ERISA plan and IRA clients. That element was substantially broadened

Adopts the Retirement Security Rule: Definition of an Investment Advice Fiduciary for Purposes of ERISA and the Code, available [here](#); Willkie Client Alert, DOL Abandons ERISA Fiduciary Rollover Guidance Appeal, available [here](#).

⁴ *Fed’n of Am.’s for Consumer Choice, Inc. et al. v. United States Dep’t of Labor et al.*, Docket No. 6:24-cv-00163 (E.D. Tex. May 02, 2024), available [here](#); *Am. Council of Life Insurers et al. v. United States Dep’t of Labor et al.*, Docket No. 4:24-cv-00482 (N.D. Tex. May 24, 2024), available [here](#).

⁵ *Fed’n of Am.’s for Consumer Choice, Inc. et al. v. United States Dep’t of Labor et al.*, No. 6:24-cv-163-JDK (E.D. Tex. July 25, 2024) (the “Eastern District Staying Opinion”), available [here](#); *Am. Council of Life Insurers et al. v. United States Dep’t of Labor et al.*, Docket No. 4:24-cv-00482 (N.D. Tex. July 26, 2024), Court Opinion (the “Northern District Staying Opinion”), available [here](#).

⁶ See *Chamber of Commerce v. Dep’t of Labor*, 885 F.3d 360 (5th Cir. 2018) (invalidating the DOL’s 2016 amendments to the definition of fiduciary under ERISA); Eastern District Staying Opinion at 1 (quoting *Chamber of Commerce*, 885 F.3d at 379, 381), 19–20, 29; Northern District Staying Opinion at 2–3, 8, 11–12.

⁷ Eastern District Staying Opinion at 22–23 (referring to *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024)). The Eastern District Court wrote, “[t]he Court thus owes no deference to DOL’s interpretation of ERISA, but rather ‘begins with the text’ of the statute—as all courts do.” *Id.* at 23.

⁸ See 29 C.F.R. § 2510.3-21 Definition of a “Fiduciary.” This definition of an ERISA investment advice fiduciary, known colloquially as the 1975 Regulation or the “five-part test” has been summarized most recently by the DOL in the Final Rule Release: a person provides “investment advice” if he or she: (1) renders advice to a plan as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property; (2) on a regular basis; (3) pursuant to a mutual understanding; (4) that such advice will be a primary basis for investment decisions; and that (5) the advice will be individualized to the plan. See Final Rule Release at 32,124. See also Definition of the Term “Fiduciary,” 40 Fed. Reg 50,842 (Oct. 31, 1975), available [here](#).

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under the Rule, and the stay of the Rule means that, for the time being, some financial services providers are less likely to be considered investment advice “fiduciaries” in their dealings with ERISA plans and IRAs. In addition, the various PTEs available to investment advice fiduciaries have reverted to their pre-PTE Amendments form, which in some cases will afford greater flexibility to financial services providers in need of prohibited transaction exemptive relief under ERISA and/or Section 4975 of the Code.

We continue to monitor developments in this area.

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