



DOL Prohibited Transaction Exemption (“PTE”) 2020-02 Overview & Considerations

I. Compliance Requirements

i. Impartial Conduct Standards

PTE 2020-02 provides conditional prohibited transaction relief to financial institutions (SEC- and state-registered investment advisers, broker-dealers, banks, and insurance companies) and their investment professionals (employees, agents, and representatives) who provide advice in accordance with the Impartial Conduct Standards (described below).

ii. Fiduciary Status Acknowledgement & Description of Services

Financial institutions must also acknowledge **in writing** their and their investment professionals’ fiduciary status under Title I of ERISA and the Internal Revenue Code, as applicable, when providing investment advice to the retirement investor, and they must describe **in writing** the specific services to be provided and the financial institutions’ and investment professionals’ material conflicts of interest.

iii. Documentation & Distribution of Rollover Recommendation Rationale

Financial institutions must document the reasons that a rollover recommendation is in the best interest of the retirement investor **and** provide that documentation to the retirement investor.

iv. Policies & Procedures

Financial institutions must adopt policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards and that mitigate conflicts of interest and must conduct an annual retrospective review of compliance.

v. Annual Retrospective Review

Financial institutions must conduct an annual retrospective review that is reasonably designed to assist them in detecting and preventing violations of, and achieving compliance with, the Impartial Conduct Standards and their policies and procedures. The methodology and results of the retrospective review must be reduced to a written report that is provided to one of the financial institution’s senior executive officers, who must then make certain certifications related to their review of the report. The financial institution must retain the report, certification, and supporting data for six years and provide these documents to the Department within 10 business days of a request.

The Department expects financial institutions to use the results of the review to find more effective ways to help ensure that investment professionals are providing investment advice in accordance with the Impartial Conduct Standards and to correct any deficiencies in existing policies and procedures. Senior executive officers should carefully review the report before making the required certifications, so that they can make the certifications with confidence. Making the certifications without carefully reviewing the report would constitute a violation of the exemption. This ensures that the financial institution, through an appropriate senior executive officer, is fully accountable for the retrospective review. The requirement that financial institutions make their report of their retrospective review available to the Department within 10 business days upon request ensures that the Department retains an appropriate level of oversight over exemption compliance.



vi. Prohibitions

To ensure that financial institutions provide reasonable oversight of investment professionals and adopt a culture of compliance, financial institutions and investment professionals will be ineligible to rely on the exemption if, within the previous 10 years, they were convicted of certain crimes arising out of their provision of investment advice to retirement investors.

They will also be ineligible if they engaged in systematic or intentional violation of the exemption's conditions or provided materially misleading information to the Department in relation to their conduct under the exemption.

II. Other Considerations

i. Impartial Conduct Standards (Overview & Summary)

The Impartial Conduct Standards are consumer protection standards that ensure that financial institutions and investment professionals adhere to fiduciary norms and basic standards of fair dealing. The standards specifically require financial institutions and investment professionals to:

- Give advice that is in the “best interest” of the retirement investor. This best interest standard has two chief components: prudence and loyalty;
 - o Under the prudence standard, the advice must meet a professional standard of care as specified in the text of the exemption;
 - o Under the loyalty standard, advice providers may not place their own interests ahead of the interests of the retirement investor, or subordinate the retirement investor's interests to their own;
- Charge no more than reasonable compensation and comply with federal securities laws regarding “best execution”; and
- Make no misleading statements about investment transactions and other relevant matters.

ii. Conflict of Interest Disclosures

Before engaging in a transaction under the exemption, a financial institution must give its retirement investor customer a written description of the financial institution's and investment professional's material conflicts of interest arising out of the services and any recommended investment transaction. The disclosure must be accurate and not misleading in all material respects. Financial institutions must disclose, for example, conflicts associated with proprietary products, payments from third parties, and compensation arrangements for both the financial institution and individual investment professional. Disclosures with material omissions will be considered inaccurate and will not satisfy the exemption.

To satisfy the exemption, the disclosure should be designed to allow a reasonable person to assess the scope and severity of the financial institution's and investment professional's conflicts of interest. Financial institutions must engage in a careful analysis to identify their material conflicts so that they and their investment professionals can provide meaningful information that retirement investors need to make decisions about their investments. The disclosure requirement is principles-based and intended to allow flexibility to apply to a wide variety of business models and practices.



iii. When is advice to rollover assets from an employee benefit plan to an IRA considered to be on a “regular basis”?

A single, discrete instance of advice to roll over assets from an employee benefit plan to an IRA would not meet the regular basis prong of the 1975 test. However, advice to roll over plan assets can also occur as part of an ongoing relationship or as the beginning of an intended future ongoing relationship that an individual has with an investment advice provider. When the investment advice provider has been giving advice to the individual about investing in, purchasing, or selling securities or other financial instruments through tax-advantaged retirement vehicles subject to ERISA or the Code, the advice to roll assets out of the employee benefit plan is part of an ongoing advice relationship that satisfies the regular basis prong. Similarly, when the investment advice provider has not previously provided advice but expects to regularly make investment recommendations regarding the IRA as part of an ongoing relationship, the advice to roll assets out of an employee benefit plan into an IRA would be the start of an advice relationship that satisfies the regular basis requirement. The 1975 test extends to the entire advice relationship and does not exclude the first instance of advice, such as a recommendation to roll plan assets to an IRA, in an ongoing advice relationship.