



The 2024 Department of Labor Retirement Security Rule is Very Different From the 2016 DOL Conflict of Interest Rule:

A DOL Fiduciary Rule Comparison

The 2024 Department of Labor (DOL) Retirement Security Rule (2024 rule) is very different from the 2016 DOL Conflict of Interest Rule (2016 rule), despite claims by rule opponents—particularly those in or affiliated with the insurance industry—that the 2024 rule is a “Fiduciary Rule 2.0.” In addition, a close reading of the 2024 rule shows that the 2024 rule is wholly consistent with the Chamber decision,¹ the broad language of the Employee Retirement Income Security Act of 1974 (ERISA), and ERISA’s protective purposes, despite claims by rule opponents that the rule conflicts with the Fifth Circuit Court of Appeals’ Chamber decision vacating the 2016 rule.

In brief, the 2024 rule’s definition of fiduciary investment advice is much narrower than the 2016 rule’s definition. Rather than consider all investment recommendations provided to a retirement saver as fiduciary advice, subject to a few narrow carveouts, as the 2016 rule did, the 2024 rule focuses on the nature of the relationship between the advice provider and the advice recipient and the circumstances under which the advice was provided. Under the 2024 rule, only those investment recommendations that are made to a retirement saver under circumstances in which the saver reasonably should expect fiduciary advice are treated as fiduciary advice. On the other hand, mere sales pitches that are made under circumstances in which the saver should not reasonably expect fiduciary advice, and education are explicitly not treated as fiduciary advice.

[1] See *Chamber v. DOL*, 885 F.3d 360 (5th Cir. 2018).

In addition, the 2024 rule's Prohibited Transaction Exemptions (PTEs), which allow fiduciaries to receive compensation despite their conflicts of interest, do not include a number of conditions that the 2016 rule imposed; rather, the 2024 PTEs provide much more flexibility to firms to determine how best to comply with the rule.

The following comparison details the material differences between the 2016 and the 2024 DOL rules.

	2016 Rule	2024 Rule
<p>Definition of Fiduciary Investment Advice:</p>	<p>The 2016 rule's definition of fiduciary investment advice was much broader than the 2024 rule's definition. As a result, the 2016 rule applied to many more interactions between financial professionals and retirement savers than the 2024 rule does.</p> <p>Specifically, the expansive 2016 rule treated all investment recommendations directed to a specific retirement investor or investors regarding the advisability of a particular investment or management decision as fiduciary investment advice, subject to a few narrow carve-outs. This definition applied even to recommendations to retail investors that would be viewed as sales pitches.</p>	<p>In contrast, the 2024 rule's definition of fiduciary investment advice is much narrower than the 2016 rule's definition. As a result, the 2024 rule applies to fewer interactions between financial professionals and retirement savers than the 2016 rule did.</p> <p>In contrast, the far narrower 2024 rule specifically focuses on whether the investment recommendation can be appropriately treated as advice in a relationship of trust and confidence. Specifically, the far narrower 2024 rule applies if a financial professional makes a recommendation under circumstances that would indicate to a reasonable investor in like circumstances that the recommendation:</p> <ul style="list-style-type: none"> • is based on a review of the retirement investor's particular needs or individual circumstances; • reflects the application of professional or expert judgment to the retirement investor's particular needs or individual circumstances; and • may be relied upon by the retirement investor as intended to advance the retirement investor's best interest.

		<p>In other words, the definition of fiduciary investment advice is limited to those circumstances in which the investor reasonably should expect fiduciary advice.</p> <p>If these kinds of recommendations were not treated as fiduciary advice, it would dishonor the investor's reasonable expectations. The final rule avoids such inequitable results. In addition, the failure to treat these kinds of recommendations as fiduciary advice would defeat ERISA's protective purposes.</p> <p>Importantly, the rule does not treat mere sales pitches that do not meet the requirements above as fiduciary advice. Similarly, the rule does not treat mere investment information or education, without an investment recommendation, as fiduciary advice.</p>
<p>Prohibited Transaction Exemptions (PTEs):</p>	<p>In the case of fiduciary recommendations to Individual Retirement Accounts (IRAs), the 2016 rule's main PTE required the protective conditions of the PTE to be set forth in an enforceable contract with the retirement saver. Specifically, the contract required those protective conditions to be included as warranties in the contract. This created contract liability for firms and financial professionals.</p> <p>The 2016 rule's PTEs included strict conflict mitigation requirements, including a condition that differences in compensation for different products and services could be paid to firms and financial professionals only if those differences were justified based on "neutral factors."</p>	<p>In contrast, the 2024 rule's PTEs do not include a contract or warranty requirement. As a result, the 2024 rule does not create contract liability for firms or financial professionals. The only remedies for non-compliance with regard to IRAs are those set forth in ERISA and the Internal Revenue Code, which include only the imposition of excise taxes in the context of advice to IRAs.</p> <p>In contrast, the 2024 rule's PTEs provides firms flexibility in determining how best to mitigate conflicts of interest. There is no requirement to base any differences in compensation on "neutral factors."</p>

The 2016 rule's PTEs required firms to provide **extensive disclosures** to retirement savers, including contract disclosures, pre-transaction disclosures, and web-based disclosures.

The 2016 rule's main PTE **prohibited** firms and financial professionals from including provisions in **contracts that disclaimed liability or required retirement savers to waive their right to pursue a class action in court.**

The 2016 rule's PTE 84-24 **required insurance companies to assume fiduciary status with respect to independent insurance agents.**

In contrast, the 2024 rule's PTEs require firms to provide **less extensive disclosures**, modeled on the Securities and Exchange Commission's (SEC's) Regulation Best Interest disclosures.

In contrast, the 2024 rule's PTEs **do not prohibit** firms and financial professionals from entering into **class-wide binding arbitration agreements** with retirement savers.

In contrast, the 2024 rule's PTE 84-24 **does not require insurance companies to assume fiduciary status with respect to independent insurance agents.**