



Investment Advice Exemption Confirmed

On February 12, 2021, the Department of Labor issued a [press release](#) confirming that the new fiduciary investment advice guidelines under Prohibited Transaction Exemption 2020-02 will go into effect on February 16, 2021. The Department also confirmed that the temporary enforcement relief provided by Field Assistance Bulletin 2018-02 will remain in place until December 20, 2021.

The Biden administration previously issued a memo to regulatory agencies suspending new regulations issued during the waning days of the Trump administration. The purpose of the suspension is to provide the incoming administration with the opportunity to review those regulations. As a result, there was some question whether the Exemption would become effective.

As described in our previous [article](#), the Exemption allows investment advice fiduciaries, as defined under ERISA and the Code, to receive compensation and to engage in principal transactions that would otherwise violate ERISA's and the Code's prohibited transaction provisions. The Exemption also provides the Department's long-awaited final interpretation of when advice to roll over retirement plan assets to an IRA (or between IRAs) is fiduciary investment advice.

The Exemption applies to SEC- and state- registered investment advisers, broker-dealers, banks, insurance companies, and their employees, agents and representatives that are investment advice fiduciaries. However, employers should be aware of the Exemption and its conditions in their engagement of (and interactions with) plan service providers.

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