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New DOL Guidance Lessens "Best Interest" Provision for Fiduciaries

New guidance issued on December 15, 2020 by the Department of Labor (DOL) lessens fiduciary requirements under the "best interest" provision for those recommending investments to 401(k) and similar defined contribution plan participants, as well as to Individual Retirement Account (IRA) owners.

The guidance, Prohibited Transaction Exemption 2020-02—Improving Investment Advice for Workers & Retirees, essentially finalizes an exemption to the prohibited-transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA), which would allow fiduciaries to collect payment from investment funds they recommend.

"Under the exemption, investment professionals must plainly tell retirement investors that they are acting as fiduciaries, and they must act in the retirement investors' best interest," acting Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA) Jeanne Klinefelter Wilson said in a statement. "In this way, the exemption protects retirement investors by requiring investment professionals to lay down clear markers about their relationship and their conduct with retirement investors."

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The new exemption on prohibited transactions, Wilson said, "preserves access to investment advice and promotes choice for retirement investors."

Those in support of the rule maintain that, by allowing fiduciary advisors to receive compensation directly from mutual fund companies -- with some restrictions – participants will not have to personally pay for such advice, which could otherwise be viewed as unaffordable.

On the opposite side are those who say that allowing third-party payments to advisors could increase the chance that those giving the advice are not necessarily doing so in retirement investors' best interests.

Some commentators have questioned whether the exemption will remain in place under the Biden administration.

The DOL has posted a fact sheet enumerating the exemption's key provisions.

Contact the Pentegra Solutions Center at solutions@pentegra.com
or 855-549-6689 for expert guidance on how to make the most of the new rules.