

DOL Drops Appeal of ASA Case, Eliminating Rollover Guidance

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In February, we reported on *American Securities Association v. U.S. Department of Labor* (M.D. Fla. Feb. 13, 2023), where the court vacated recent guidance from the Department of Labor (DOL) on when rollover advice is viewed as fiduciary under ERISA, specifically the DOL's 2021 FAQs regarding Prohibited Transaction Exemption 2020-02 (PTE 2020-02), which provided that a financial advisor's one-time recommendation to roll over retirement plan assets to an individual retirement account is fiduciary investment advice subject to ERISA (PTE 2020-02 Guidance). The ruling brought uncertainty to financial institutions and advisers that had implemented new rollover policies and procedures designed to comply with the PTE 2020-2 Guidance.

On April 14, 2023, the DOL filed a notice of appeal, but on May 15, 2023, the American Securities Association reported that the U.S. Department of Justice, which was representing the DOL, voluntarily dismissed its appeal of the February 13, 2023 ruling that vacated the PTE 2020-02 Guidance. The dismissal means the ruling vacating the PTE 2020-02 Guidance will stand and eliminates concerns around the application of the fiduciary rule and specific policy and procedure requirements for one-time rollovers, for the time being.

What Is Next?

As the contours of the regulatory landscape are uncertain and continue to evolve, we believe it is important for financial institutions and advisers to fully evaluate their specific facts and circumstances prior to making any changes to procedures, policies or processes relating to the PTE 2020-02 Guidance. We note that it is generally anticipated that the DOL will release a new fiduciary rule, which could have an impact on rollover recommendations. We will continue to monitor developments, although the substance and timing of any new rules and/or guidance is currently unknown. In addition, advisers should continue to be mindful of their fiduciary obligations and consider necessary client disclosures in connection with any such rollover recommendations.

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