

THIS MONTH IN COMPLIANCE:

Annual Renewal Calendar & DOL PTE 2020-02 Update

MONTHLY COMPLIANCE TASKS

Please be sure to check your SmartRIA CCO portal to keep up with your monthly Compliance tasks or utilize the CCO Scorecard included in our This Month in Compliance email. Please contact the following for:

- Login and Portal Requests: Sara Sparks: ssparks@thecomplianceresource.com
- Task Related Questions: Nancy Harry: nharry@thecomplianceresource.com
 Stacie Craddock: scraddock@thecomplianceresource.com
 Sara Sparks: ssparks@thecomplianceresource.com

ANNUAL RENEWAL BEGINS

Firms are required annually to renew their FINRA, other self-regulatory organization (SRO) and state/jurisdiction registrations through the Annual Renewal Program, which begins in the fourth quarter of each year. FINRA's Web CRD/IARD ("Web CRD/IARD") system collects all applicable renewal fees on behalf of itself and participating regulators, which enables firms to submit their total renewal payment through the Web CRD/IARD system instead of each regulator. Your firm must pay all applicable renewal fees assessed on its Preliminary Statement for the firm, branch offices and associated individuals to ensure continued eligibility to do business in the coming year.

Beginning this year, renewal statements will only be accessible through E-Bill-Flex Funding Account ("Flex Funding Account") on Firm Gateway. Renewal reports will continue to be available through Web CRD/IARD for reconciliation purposes. If CRP has access to E-Bill on Firm Gateway, CRP will access the renewal statement and provide this year's information to your firm. We will also track the payments to ensure your firm meets the deadlines described below. Firms can use their Web CRD/IARD Renewal Accounts to pay their annual renewal fees. Beginning on the renewal payment deadlines, if the firm has sufficient funds to cover their total assessment in the Flex-Funding Account, FINRA Web CRD/IARD will transfer funds from a firm's Flex-Funding Account to its Renewal Account.

OCTOBER 18	Post-Dated Forms U5 - Begin Preparing Post-Dated Forms U5.
NOVEMBER 8	Retrieve Your Firm's Preliminary Statement - Beginning November 8, 2021, firms can view, print, and pay their Preliminary Statements by logging onto E-Bill.
DECEMBER 13	Pay Your Firm's Preliminary Statement - Payment Deadline: December 13, 2021. Review the Renewal Program Payment Options for detailed information. FINRA recommends using E-Bill-Flex Funding Account to pay your Preliminary Statement. If you use other means, submit your payment with sufficient time to allow for mail delivery and/or payment processing to post to your Renewal Account by the deadline. FINRA-registered firms that do not have payment posted by the deadline may be assessed a Renewal Late Fee.
DECEMBER 26	End of Year Filings and Payments Due Before 6 P.M. Eastern Time (ET) -The deadline to submit filings and any late registration renewal payments in 2021 is 6 p.m., ET. Important Note: The on-time renewal payment deadline was December 13; however, FINRA will continue to accept late renewal payments until 6 p.m. ET, December 26, 2021. After this date and time, any unpaid registration renewal fees will result in jurisdictions automatically terminating registrations for failing to renew and the inability to conduct business in these jurisdictions as of January 1, 2022.
JANUARY 2	Retrieve Your Firm's Final Renewal Statement - Beginning January 2, 2022, firms can review and pay Final Statements by logging onto E-Bill Flex Funding Account. Firms can also retrieve their renewal reports through Web CRD/IARD. You should review the statement for accuracy and keep a copy of the renewal reports for your records. Historical statements are available through E-Bill. Individuals can also review their personal industry record in the Financial Professional Gateway (FinPro).
JANUARY 28	Reconcile or Pay Your Final Statement - Report in writing to FINRA any discrepancies you find on your Final Statement. FINRA must receive this by January 28, 2022. This is also the deadline date for which FINRA must receive payment if there is a balance due on your firm's Final Statement.

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DOL - PROHIBITED TRANSACTION EXEMPTION 2020-02 – TEMPORARY DELAY OF ENFORCEMENT

The Department of Labor (“DOL”) has issued a temporary delay of the enforcement for Prohibited Transaction Exemption. In the release dated October 25, 2021, the DOL’s Employee Benefits Security Administration (EBSA) announced that from December 21, 2021, through January 31, 2022, the department will not pursue prohibited transaction claims against investment advice fiduciaries who are “working diligently, and in good faith, to comply with the Impartial Conduct Standards for transactions exempted in PTE 2020-02.” Additionally, it stated it will not treat such fiduciaries as if they were violating the applicable prohibited transaction rules. The release advised that the DOL will not enforce the specific documentation and disclosure requirements for rollovers in PTE 2020-02 through June 30, 2022. However, all other requirements of the exemption will be subject to full enforcement on February 1, 2022.

Firms are encouraged to develop tools to comply with the rollover documentation and disclosure requirements in Sections 11(b)(3) and (c)(3) of PTE 2020-02. Some firms are working with third party vendors to automate much of the documentation and analysis of rollover recommendations. In previous guidance, the Department had acknowledged the difficulty that firms may sometimes face in obtaining plan data as they make the transition to PTE 2020-02:

To satisfy the documentation requirement for rollovers from an employee benefit plan to an IRA, investment professionals (“IAR’s”) and firms should make diligent and prudent efforts to obtain information about the existing employee benefit plan and the participant’s interests in it. In general, such information should be readily available as a result of Department regulations mandating disclosure of plan-related information to the plan’s participants (see 29 CFR 2550.404a-5). If the retirement investor won’t provide the information, even after a full explanation of its significance, and the information is not otherwise readily available, the firm and IAR’s should make a reasonable estimation of expenses, asset values, risk, and returns based on publicly available information. The firm and IAR’s should document and explain the assumptions used and their limitations. In such cases, the firm and IAR’s could rely on alternative data sources, such as the most recent Form 5500 or reliable benchmarks on typical fees and expenses for the type and size of plan at issue.

PTE 2020-02 BACKGROUND

In December 2020, the DOL issued PTE 2020-02, which, among other things, permits investment advice fiduciaries to receive compensation in relation to providing fiduciary investment advice, including with respect to advice to rollover a participant’s account in a workplace retirement plan to an IRA and other similar types of rollover recommendations. In addition, in the preamble to the PTE the DOL announced an expanded definition of fiduciary advice, meaning that many more firms and IAR’s will be fiduciaries for their recommendations to retirement investors and, therefore, will need the protection provided by the exemption. In PTE 2020-02, the DOL defined “rollover” recommendation as: ...

“ any recommendation to roll over assets from a Plan to another Plan or an IRA..., from an IRA...to a Plan, from an IRA to another IRA, or from one type of account to another (e.g., from a commission-based account to a fee-based account)”.

The PTE requires that, for all “rollover” recommendations, the Firm must **provide the participant or IRA owner with the “specific reasons” why the rollover is in the investor’s best interest.** Here’s how that was explained in the preamble:

*The Firm also must provide **documentation of the specific reasons that any recommendation to roll over assets from one Plan or IRA to another Plan or IRA, or from one type of account to another, is in the Retirement Investor’s best interest.***

Firms must create a process for investment advisers to recommend rollovers and transfers of IRAs from other firms that includes consideration of the services provided by the investment adviser, as compared to the services that the IRA investor was receiving from the other firm. In some cases, it will be fairly easy to do the comparison, for example, where the individual IAR’s have moved from the prior firm-where the IRA was held-to the new firm. In other cases, it will require a discussion with the IRA investor about the services being received from the other firm, and an objective determination of the services that the IRA investor needs (and the broker-dealer or investment adviser can provide).

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Since a recommendation of an IRA transfer is considered to be a rollover recommendation, PTE 2020-02 requires that the IRA investor be given a written statement of the “specific reasons” why the IRA transfer is in the investor’s best interest. In light of the language in the preamble, it would be advisable to include services in the analysis and the reasons why the rollover is in the best interest of the IRA investor.

The Department agrees with commenters that the long-term impact of any increased costs and the reason(s) why the added benefits justify those added costs, as well as the impact of features such as surrender schedules and index annuity cap and participation rates, should be considered as part of any rollover recommendation, as relevant.

Costs are a part of any best interest analysis. The issue is not that the lower cost product or service is inherently better, but instead that, if the costs in the recommended course of action are higher, the difference should be justifiable based on the needs, investment objectives, risk tolerance and financial circumstances of the IRA investor (or in the words of the PTE, the “retirement investor”).

Below is the PTE’s definition of best interest:

*Advice is in a Retirement Investor’s “Best Interest” if such advice reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, **based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor**, and does not place the financial or other interests of the IAR’s, Firm or any Affiliate, Related Entity, or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor’s interests to their own.*

Best Practice would include an Adviser documenting specific information about the IRA investor’s along with information stated above regarding a cost analysis.

- (i) Investment objectives,
- (ii) Risk tolerance,
- (iii) Financial circumstances, and
- (iv) Financial needs.

Without the above information, how can a determination be made about which course of action meets those criteria?

Recommendations to transfer IRAs may be the most common of the rollover recommendations covered by the PTE. As a result, firms should thoughtfully develop processes that comply with the conditions of the PTE. Well-considered processes will support the requirement to provide the specific reasons to the IRA investor, and will also be part of satisfying the mitigation requirement under the PTE.

Below are the conditions outlined in the PTE 2020-02:

- **ACKNOWLEDGE** their fiduciary status in writing,
- **DISCLOSE** their services and material conflicts of interest,
- **ADHERE TO IMPARTIAL CONDUCT STANDARDS** requiring that:
 - Investigate and evaluate investments, provide advice, and exercise sound judgment in the same way that knowledgeable and impartial professionals would (i.e., the recommendations must be “prudent”),
 - Act with undivided loyalty to retirement investors when making recommendations (in other words, our Firm must never place our 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
 - Avoid making misleading statements about investment transactions and other relevant matters,
- **ADOPT POLICIES AND PROCEDURES** prudently designed to ensure compliance with the Impartial

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- **CONDUCT STANDARDS AND TO MITIGATE CONFLICTS OF INTEREST** that could otherwise cause violations of those standards;
 - Document and disclose the specific reasons that any rollover recommendation is in the retirement investor's best interest; and
- **CONDUCT AN ANNUAL RETROSPECTIVE COMPLIANCE REVIEW.**

CRP's tools to assist firms in complying with the following conditions above include:

- ***Adopt and Tailor Sample Policies and Procedures*** (sent out in our October 2021 TMR and also included on this Month's publication). Firms decide between if they will provide IRA education only or if they offer advice on rollover and IRA transfers and comply with the PTE 2020-02.
- If your Firm intends to adhere to compliance with PTE 2020-20 – Firms can use the sample ***Rollover Analysis - Comprehensive Form. See attached.***
- ***Continue to obtain Financial Profile information.***
- ***Stay tuned next year for guidance on the Annual retrospective compliance review.***