



PERSONAL FINANCE

# Biden-era retirement rule may be in jeopardy after Trump takes office

PUBLISHED THU, DEC 5 2024-2:10 PM EST



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## KEY POINTS

The U.S. Labor Department issued a retirement security rule in April. Two Texas courts seem inclined to overturn it.

The administration of President-elect Donald Trump, who has signaled his intent to pursue a deregulatory agenda, may decline to keep defending the “fiduciary” rule in court, attorneys said.

The same thing happened during Trump’s first term, with respect to a similar Obama-era DOL fiduciary rule.





The Biden-era regulation, [issued in April](#), aims to rein in conflicts of interest that may taint investment recommendations from unscrupulous advisors, brokers or insurance agents.

Officials worry such conflicts might lead an agent to profit at the consumer's expense, such as when investors are advised to roll money from workplace retirement plans like a 401(k) to an individual retirement account.



VIDEO 04:10

Fight over fiduciary standard: What 401(k) participants should know

The most immediate threat to President Joe Biden's [Retirement Security Rule](#) is that the Trump administration declines to keep defending it in court, attorneys said.

The rule faces an uphill legal battle. Two Texas federal courts have already stalled its implementation and seem very likely to kill it, legal experts said.

"At that point, the Trump administration could walk away from the case, just abandon it," said Fred Reish, a retirement law expert and partner at Faegre Drinker Biddle & Reath LLP.

## 'Here we go again?'

Something almost identical happened during Trump's first term as president.



“That sort of replay is a fascinating possibility,” said Andrew Oringer, partner and general counsel at the Wagner Law Group.

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However, it’s not a certainty, attorneys said.

“You might think, since the Trump administration the first time let the retirement rule die on the vine, ‘here we go again,’” Oringer said. “But I think we’re really in wait-and-see mode.”

The Trump transition team didn’t respond to CNBC’s request for comment.

## What the DOL fiduciary rule does

A primary goal of the Department of Labor rule is to raise the investment-advice standard tied to 401(k)-to-IRA rollovers, especially those for certain insurance products, experts said.

Rollovers are common for recent retirees. They are becoming more prevalent as baby boomers reach retirement age.

About 5.7 million people rolled over \$618 billion into IRAs in 2020, according to the most recent IRS [data](#). By 2022, that dollar amount had grown to \$779 billion, [according](#) to the White House Council of Economic Advisers.

The new Labor rule “makes it highly likely that rollover recommendations are subject to a fiduciary standard,” Reish said.



**U.S. Labor Secretary Julie Su.**

*Chip Somodevilla | Getty Images News | Getty Images*

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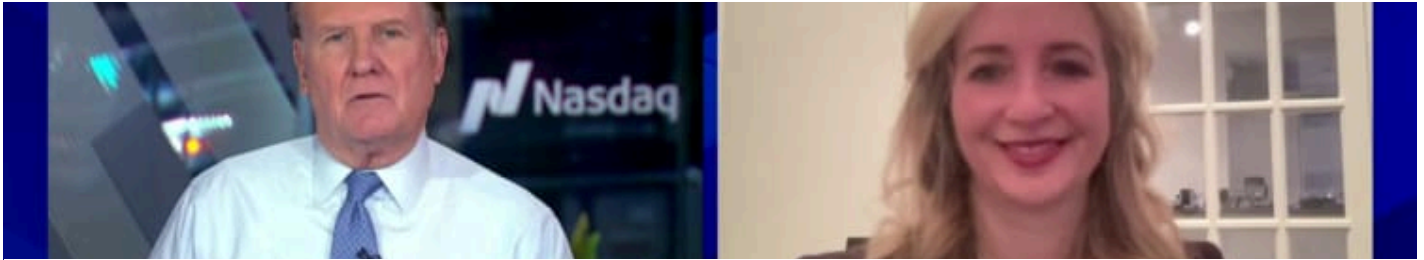
A fiduciary standard is a legal structure whereby financial professionals — brokers, advisors, insurance agents and others — must recommend investments that are in a client’s best interest instead of ones, for example, that generate more of a profit for the agent.

However, relative to rollovers, many retirement investors may not get such fiduciary advice, attorneys said.

The Employee Retirement Income Security Act stipulates that one-time advice to an investor — instead of an ongoing client relationship — generally doesn’t meet the fiduciary bar.

Since rollovers are often a one-off transaction, many aren’t covered by this heightened protection under the Employee Retirement Income Security Act, attorneys said.

The Biden-era rule would likely have the largest impact on insurance agents that sell “non-securities” products, which include certain annuities like indexed annuities, attorneys said.



VIDEO 06:26

401(k) doesn't seem to have the same fanbase that social security has, says Allison Schrage

Such agents would likely be required to assess additional factors in their rollover analyses, including whether it's in a consumer's best interest to take money from their 401(k) plan and move it to an annuity, Reish said.

Investment advisors and brokers who sell securities products, such as mutual funds or exchange-traded funds, are already subject to a Securities and Exchange Commission rule [issued](#) in 2019 that is "in many ways like the DOL's rule," Reish said.

## Texas courts likely to strike down DOL rule

Two federal district courts in Texas issued a national "stay" of the regulation, in separate rulings in July.

They indefinitely delayed the rule's Sept. 23 start date while the courts conduct a more detailed review of the lawsuits, which were filed by several insurance industry groups.

Lawyers expect the courts to overturn the rule. Indeed, the judges hinted at that outcome.

"The Rule is almost certainly unlawful for a broad class of investment professionals in the industry — not just plaintiffs," according to a July 26 [order](#) by the U.S. District Court for the Northern District of Texas, in the lawsuit American Council of Life Insurers v. United States Department of Labor.

ACLI and other insurance industry groups lauded that decision, [calling](#) the regulation "DOL's latest attempt to vastly expand its statutory authority by imposing fiduciary status on almost every financial professional



If the case were appealed by either side, it would go to the U.S. Fifth Circuit Court of Appeals — the same one that killed a similar Obama-era fiduciary rule.

At either stage, the Trump administration could choose to stop defending the regulation, attorneys said.

Trump has signaled an intention to pursue a deregulatory agenda during his second term.

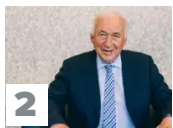
“None of that is certain,” Reish said. “President-elect Trump is both a Republican and a populist. We don’t know if conservative Republican philosophies will prevail on any given issue, or whether a populist approach would prevail.”

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