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DOL Proposes New Fiduciary Advice Rule

November 1, 2023

The Proposal

On October 31, 2023, the Department of Labor (DOL) [released](#) a proposed amendment to the definition of an investment advice fiduciary. Although it will be common to consider this the “new fiduciary rule”, the DOL was careful to title it as the “Retirement Security Rule: Definition of an Investment Advice Fiduciary.”

Why?

Throughout the 277-page proposal, the DOL repeatedly emphasized that the retirement marketplace has shifted dramatically since 1975, when it previously published a regulation defining fiduciary investment advice. Much of that shift is related to the migration from defined benefit plans (in which professional money managers make the investment decisions) to defined contribution plans. “Individuals, regardless of their financial literacy, have thus become increasingly responsible for their own retirement savings.”

What Troubles the DOL?

The DOL believes investors should be able to trust that advice-givers are doing it with the investors’ best interests at the forefront. It is particularly worried about advice to: (1) take a rollover or distribution; and (2) buy certain products – especially fixed index annuities – that lack fee transparency and may generate exorbitant (and potentially hidden) fees.

What is Covered?

Under the proposal, a person would be a fiduciary if he or she provides investment advice or makes an investment recommendation to a retirement investor (e.g., plan, plan fiduciary, plan participant, IRA owner) for a fee or other compensation in one of three contexts:

- 1) The person directly or indirectly has discretionary authority or control over the investor’s investment property;
- 2) The person makes investment recommendations to investors on a regular basis as part of his or her business and the recommendation is provided under circumstances indicating it is based on the investor’s particular needs; or
- 3) The person represents or acknowledges that he or she is a fiduciary.

What Does It Mean for Plan Sponsors?

The DOL provided a tight 60-day window for responsive comments and likely will move aggressively to finalize the rule. However, the proposal and final rule will face a number of lawsuits challenging whether the rule would be within the DOL’s authority. In the meantime, we recommend that plan sponsors consider:

- The motivation behind the rule: participants’ retirement security now depends much more fully on their decisions and the advice they receive;
- The rule is intended to provide your employees greater protections and an opportunity to have confidence they can trust the person giving them advice; and
- If you encounter anyone objecting to the rule, it’s likely because they feel they cannot hit their profit margins if their advice is required to put the investor’s interests first. Run the other way from those objectors; keep them away from your employees.