DOL's Final Retirement Security Fiduciary Rule

May 2, 2024

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As an update to our prior summary here, on April 23, 2024, the DOL issued a final rule (the ***"Final Rule"***) and related prohibited transaction exemption amendments defining when a person is providing fiduciary investment advice to ERISA plan sponsors, ERISA plan participants, individual retirement accounts (***"IRAs"***), and IRA owners or beneficiaries (each, a ***"Retirement Investor"***). The Final Rule is the latest development in a more than decade-long effort by the DOL to replace the current 1975 definition of an investment advice fiduciary.

The Final Rule provides that a person is an investment advice fiduciary if they provide investment advice or make a recommendation for a fee to a Retirement Investor in any context where:

- An adviser makes professional investment recommendations on a regular basis as part of its business, and the recommendation to a Retirement Investor is made under circumstances that would indicate to a reasonable investor in like circumstances that the recommendation (including one-time rollover advice) is based on a review of the Retirement Investor's particular needs or individual circumstances, reflects the application of professional or expert judgement to the Retirement Investor's particular needs or individual circumstances, and may be relied upon by such Retirement Investor as intended to advance the Retirement Investor's best interest; or

- An adviser represents or acknowledges that they are acting as a fiduciary under ERISA with respect to the recommendation.

With respect to the above contexts, the DOL further clarifies in the Final Rule that mere sales pitches and investment education, without a recommendation, are not fiduciary investment advice.

In addition, the DOL finalized amendments to Prohibited Transaction Exemption 2020-02 (that is, the exemption permitting fiduciaries to retain variable compensation), which revised the required fiduciary acknowledgement and rollover disclosures, expanded criminal and civil disqualification events (including foreign convictions), and added under the exemption robo-advice, pooled plan provider advice, and advice provided in response to "request for proposals." Further, the DOL made conforming amendments to other related ERISA-prohibited transaction exemptions that were impacted.

The Final Rule, including the final amendments to the prohibited transaction exemptions (links provided below) are effective September 23, 2024, subject to a one-year transition relief period for certain provisions within the prohibited transaction exemptions.

- Final Retirement Security Fiduciary Rule is available here.

- Final Amendment to Prohibited Transaction Exemption 2020-02 (eligible investment advice fiduciaries) is available here.

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- Final Amendment to Prohibited Transaction Exemption 84–24 (sales of insurance products) is available here.
- Final Amendment to Prohibited Transaction Exemptions 75–1, 77–4, 80–83, 83–1, and 86–128 (securities transactions, proprietary mutual funds, sales of securities, mortgage pools, and affiliated brokers) is available here.

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