DOL's Proposed Retirement Plan Fiduciary Rule

November 14, 2023

RELATED PRACTICES Executive and Incentive Compensation, Retirement Plans

On October 31, 2023, DOL issued a proposed rule (the "***Proposed 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 Proposed 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 they:

- Have discretionary authority or control with respect to purchasing or selling securities or other investment property for a Retirement Investor;
- Make investment recommendations on a regular basis as part of their business and the recommendation to a Retirement Investor is provided under circumstances indicating that the recommendation (including one-time rollover advice) is based on the particular needs or individual circumstances of the Retirement Investor and may be relied upon by such Retirement Investor as a basis for investment decisions that are in a Retirement Investor's best interest; or
- Represent or acknowledge they are acting as a fiduciary when making investment recommendations.

In addition, the DOL proposed amendments to Prohibited Transaction Exemption 2020-02, which include changes to the required fiduciary disclosure requirements, expand criminal disqualification events, and include robo-advisers under the exemption. Further, the DOL made conforming amendments to other related ERISA prohibited transaction exemptions that were impacted. The Proposed Rule, including the proposed exemptions (links provided below), are subject to a 60-day comment period through January 2, 2024, and the DOL anticipates holding a public hearing in mid-December 2023 on the Proposed Rule.

- Proposed Retirement Security Fiduciary Rule is available here.
- Proposed Amendment to Prohibited Transaction Exemption 2020-02 (nondiscretionary fiduciary investment advice) is available here.
- Proposed Amendment to Prohibited Transaction Exemption 84–24 (affiliated securities broker) is available here.
- Proposed 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.

© 2026 Haynes and Boone, LLP