

DOL FIDUCIARY PROPOSAL

As we move into 2016, plan sponsors should be aware of the Department of Labor's (DOL) Fiduciary Proposal. The original proposal was made in April 2015, but the final version is expected during the first quarter of 2016. The DOL intends to use this rule to help address conflicts of interest with providers of retirement advice. Plan sponsors need to pay attention to the outcome of this as many expect it to impact the administration and consulting of defined contribution plans.

DOL PROPOSED CHANGES

When The Employee Retirement Income Security Act of 1974 (ERISA) was passed in 1974, 401(k) plans did not exist and IRAs had recently been authorized. Moving forward to today, these retirement vehicles are widely used, putting greater responsibility on individual investors to manage their own retirement money. Therefore, in April 2015, the DOL issued a proposal on what constitutes a "fiduciary" under ERISA. The DOL's objective with the proposal is to update the law to include participant directed plans and IRAs. Under the proposed definition, any individual receiving payment for providing advice to a plan sponsor, participant, or IRA will be deemed a fiduciary. The new definition will likely include advice on what assets to purchase or sell, and whether a participant should rollover their assets to an IRA from an employer-based retirement plan. This proposal will not apply to persons providing "investment education", making a "sales pitch", order-takers, nor providers of valuations for stock in an employee stock ownership plan.

Also included in the proposal was a "Best Interest" fiduciary standard that would impose a duty to all fiduciaries to provide advice in the best interest of the client. Fiduciaries would be prohibited from accepting payment that arises from a conflict of interest, unless the fiduciary qualifies for the newly proposed "Best Interest Contract Exemption". In order to qualify for the exemption a fiduciary must enter into a written contract with the client that:

- Acknowledges fiduciary status;
- Discloses conflicts of interest;
- Requires compliance with policies and procedures to mitigate conflicts of interest; and
- Clearly discloses the cost of their advice.

Additionally, fiduciaries would have to notify the DOL of its intent to utilize the exemption.

ANTICIPATED IMPACT

The proposal would not impact Registered Investment Advisors (RIA), such as Highland Associates, since they already have compliance and disclosure requirements under existing securities law. Instead, it would impact brokers and insurance agents by making them provide the same type of disclosure and compliance policies as RIAs. The goal of this legislation is to better protect the consumer by requiring those providing advice on retirement accounts to act as a fiduciary. An example would be participants rolling funds out of retirement plans and into an IRA. The DOL wants to ensure that those recommending a rollover are doing so in the best interest of the client. The final proposal is expected in early 2016 with an effective date approximately eight months after adoption.

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