Jennifer Kiffmeyer

Making Sense of DOL Regulations

5 QUESTIONS

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The Department of Labor has made sweeping changes to the ERISA standard of care and the definition of who is considered a fiduciary when providing investment advice for a fee. As a result, the financial services industry and investors are facing dramatic changes that might take years to fully understand and implement. For clarity on the issues, we invited Jennifer Kiffmeyer, director of educational content at the Retirement Learning Center, to elaborate on some salient questions. Kiffmeyer is co-author of *The Retirement Resource Guide: Essential ERISA Education and Best Practices for Financial Advisors*, winner of multiple APEX awards for communication excellence. She is in her final year of study in pursuit of her Juris Doctor, with an emphasis on ERISA law. Here is her take on the new DOL ruling.

WHAT STANDARDS OF CLIENT CARE APPLY TO FINANCIAL ADVISERS CURRENTLY?

Financial advisers have operated within an established regulatory environment for some time. In fact, there are three primary standards of care in place, governed by three different regulatory bodies. Broker-dealers must operate under the FINRA-Regulated Suitability Standard, which requires that the investment recommendations they make be suitable at the time they are made to their clients. In contrast, registered investment advisers operate under the SEC-Regulated Fiduciary Standard, which requires them to act in the best interest of their clients initially and on an ongoing basis. Finally, advisers who work with qualified retirement plans and IRAs may be subject to the Department of Labor's (DOL's) Fiduciary Standard under the Employee Retirement Income Security Act of 1974 (ERISA). Financial advisers who meet all five elements of the test become fiduciaries with respect to the plans they advise. The DOL's ERISA fiduciary standard requires financial advisers to operate in the best interest of their investor-clients and avoid conflicts of interest. However, under current DOL rules, it is possible for a financial adviser to work with retirement plans and IRAs and not be considered a fiduciary.

HOW IS THE DOL'S DEFINITION OF INVESTMENT ADVICE FIDUCIARIES TO RETIREMENT PLANS AND IRAS CHANGING?

The DOL's new definition of investment advice fiduciary substantially broadens the scope of who is considered a fiduciary with respect to retirement plans and IRAs by reason of providing investment advice for a fee.

WHAT WILL BE THE IMPACT ON FINANCIAL ADVISERS?

This new definition was 40 years in the making, and its impact will be substantial. At a high level, three key changes result from these new rules. First, virtually all recommendations made to retirement plan investors (including IRA owners) will be considered fiduciary investment advice. Even one-time acts of advice (e.g., a rollover discussion) could result in fiduciary status. Second, many advisers who were not acting in a fiduciary capacity under the old rules will now become fiduciaries to qualified plans and IRAs. Finally, fiduciary advisers must adhere to Impartial Conduct Standards that require them to provide advice in the best interest of their investors, receive only reasonable compensation for their advice and not make misleading statements.

CAN ADVISERS AVOID FIDUCIARY STATUS, OR AT LEAST MITIGATE CONFLICTS OF INTEREST?

Yes, the DOL has included several categories of conduct that would not result in fiduciary status for advisers. These exclusions, for example, include, among others, providing information and materials that constitute investment or retirement education (not advice), or simply making a platform of investment alternatives available.

WHEN MUST FINANCIAL ADVISERS COMPLY WITH DOL'S NEW RULES?

The new rules take effect June 7, 2016. However, the DOL will not require compliance with the new rules until April 10, 2017, and, even then, there is a transition period through Dec. 31, 2017, before full compliance is mandatory. ■