REGULATORY Update

QUARTERLY UPDATE, JULY 2016

Department of Labor Finalizes Conflict of Interest Rule

A years-long saga came to a resolution on April 6, when the U.S. Department of Labor (DOL) announced the finalization of its much anticipated Conflict of Interest Rule. The rule, which broadens the definition of fiduciary advice on qualified retirement accounts, including workplace retirement plans and IRAs, represents one of the most impactful developments since the establishment of ERISA in 1974.

The key tenet of the rule, which was originally proposed in 2010 and reintroduced in April 2015, is to ensure that fiduciaries are acting in the best interest of retirement plan participants and retirement account holders when providing investment advice. As the financial services community continues to examine the final rule and assess the operational impact it will have on policies and procedures, retirement plan sponsors may want to familiarize themselves with the rule's major themes.

WHAT ARE THE KEY TAKEAWAYS?

In brief, the new DOL rule:

- ➔ **Expands the types of retirement plans subject to fiduciary rules.** Most significantly, the DOL's fiduciary rules now cover IRAs, directly affecting participants who receive advice about IRA rollovers from their plans.
- ➔ **Refines the definition of who is a fiduciary.** Under the new rules, a fiduciary is any individual who receives compensation for providing advice that is individualized or specifically directed to a particular plan sponsor (e.g., an employer with a retirement plan), plan participant, or IRA owner and intended to help him or her make a retirement investment decision.
- ➔ **Modifies fiduciary exemptions that advisors can use to receive compensation for retirement plan services.** Being a fiduciary means that an advisor must provide impartial advice in the client's best interest and cannot accept any payments that create a conflict of interest, unless the advisor qualifies for an exemption. One of these exemptions, known as the Best Interest Contract (BIC) exemption, allows firms to continue to set their own compensation practices provided that they, among other things, commit to putting their clients' best interest first and disclose any conflicts that may prevent them from doing so.
- ➔ **Allows advisors, plan sponsors, and service providers to provide general education on retirement saving without triggering fiduciary status.** Education, in the context of the rule, is defined as general plan information, general financial or investment information, asset allocation models, and interactive investment materials.

WHEN DOES THE NEW RULE TAKE EFFECT?

The expanded fiduciary definition will take effect in April 2017. Other aspects of the rule will be phased in by January 1, 2018.

Money Market Reform Deadline Approaching, Retirement Plans Impacted

In July 2014, the U.S. Securities and Exchange Commission (SEC)—the primary regulator of money market mutual funds—issued new rules for further regulation of these funds that are to be implemented by October 2016. The new rules will change how money market funds, which are frequently offered as investment options within retirement plans, are invested, priced, operated, and acted upon when financial markets are under stress. Sponsors of retirement plans should consider how their use of money market funds may need to change in light of these revised rules.

THE NEW MONEY MARKET RULES AT A GLANCE

- ➔ Money market funds can fall into three classifications: institutional, retail, or government funds.
- ➔ Institutional funds will be required to have a floating NAV and may impose redemption fees and gates (a temporary measure that may be implemented by a mutual fund that limits redemptions for a short period of time).
- ➔ Retail funds will have a stable NAV but may impose redemption fees and gates.
- ➔ Government funds (retail or institutional) will have a stable NAV and are not subject to redemption fee or gate requirements.

Defined contribution plans are exempt from the new floating-rate NAV requirements; however, any nongovernment money market fund in the plan will be subject to potential liquidity fees and redemption gates. In addition, defined benefit plans that are considered institutional will need to review whether the possibility of a gate or fee could reduce liquidity to such an extent that the plan would not be able to make required pension payments in a timely fashion.

STEPS YOU CAN TAKE NOW

Working with their plan advisor, retirement plan sponsors can prepare for the October 14, 2016, implementation deadline by:

1. Understanding the amended rule for money market funds and its potential impact on plan participants
2. Exploring alternatives to retail money market funds, including a shift to a government money market fund or a stable-value collective trust
3. Contemplating preferences for safety, liquidity, and return for this type of investment and then selecting a new investment that matches those preferences
4. Implementing a communication strategy to educate participants about any changes to the plan's money market fund options

We Can Help

Please let us know if you would like to discuss the impact of the new DOL rule on your participants, along with issues to be mindful of leading up to the implementation date. We can also review your retirement plan in light of the new money market rules in order to determine if any changes to your investment lineup will be needed.

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