

REGULATORY Update



QUARTERLY UPDATE, OCTOBER 2016



The Conflict of Interest Rule: What Now for Plan Sponsors?

The U.S. Department of Labor's (DOL) Conflict of Interest Rule, which was finalized on April 6, has now been analyzed and opined upon by the financial services industry for several months. The rule will undoubtedly have a significant impact on the way providers of retirement plan services conduct business, and its effects will ripple out to plan sponsors, plan administrators, and human resources professionals who are charged with administering workplace retirement plans on behalf of their employees.

As a refresher, the Conflict of Interest Rule broadens the definition of fiduciary advice on qualified retirement accounts, including workplace retirement plans and IRAs. It is designed to ensure that fiduciaries (such as financial advisors, investment providers, and recordkeepers) are acting in the best interest of retirement plan participants and retirement account holders when providing investment advice. Let's take a look at some areas in which the rule will affect plan sponsors, along with some tips you can use to cope with the impending changes.

EXPECT PAPERWORK—LOTS OF PAPERWORK

Most recordkeepers, broker/dealers, insurance agencies, and investment advisor firms have spent the past several months assessing the operational challenges of complying with the DOL rule. As firms begin to unveil their logistical road maps, plan sponsors should expect to receive revised or amended service contracts and agreements. Some service providers may require changes to a plan's platform or product, while others may reduce or expand their service offerings. The compensation that your plan and participants pay to service providers could increase or decrease. If that occurs, providers will be required to furnish new fee disclosure notices. Some changes may require written consent from plan trustees, and others may be authorized via negative consent documents.

As fiduciaries, plan sponsors, plan administrators, and investment committees have a duty to monitor and understand these changes, including how they will affect plan participants. Be sure to ask service providers for clarification of any changes that you don't understand, and document your inquiries and their responses.

FOR RETIREMENT PLAN COMMITTEES, AN EMPHASIS ON OVERSIGHT

Prior to the DOL rule, retirement plan committees may have worked with a broker who was not held to the fiduciary standards of loyalty, prudence, and care. Under the rule, everyone who renders advice to retirement plans and participants is considered an ERISA fiduciary. As a result, retirement plan committees must carefully monitor the services and interactions of service providers who are now serving in a fiduciary capacity.

This duty has always existed, but committees must be especially diligent going forward and ensure that they have effective policies and procedures to support their oversight of fiduciary service providers. Because a change in fiduciary status may affect service offerings and compensation, committees also have a duty to determine whether compensation is reasonable for the services being rendered. Periodic benchmarking and cost analysis are best practices that can help committees determine if retirement plan and investment fees are reasonable.

KEEPING TRACK OF IRA ROLLOVERS

The scope of the DOL rule extends beyond workplace retirement plans. IRAs also fall under the rule's purview, and advice on retirement plan distributions will be covered under ERISA. To avoid triggering fiduciary status, service providers may decline to assist terminated participants with rollovers. Plan administrators may notice fewer rollovers out of plans by terminated participants, and they will need to examine policies and procedures to accommodate former employees who have vested balances.

MOVING FORWARD

The DOL's expanded definition of a fiduciary takes effect on April 1, 2017, and other aspects of the rule will be phased in by January 1, 2018. Many service providers are taking an "earlier is better" approach, so plan sponsors, trustees, and administrators will likely begin to notice a spike in communications in

the fourth quarter of 2016. Remember, regardless of the specific impact that the Conflict of Interest Rule may have on your plan, it is incumbent upon retirement plan fiduciaries to prudently monitor and scrutinize service providers, and to always act for the exclusive benefit of plan participants and beneficiaries.



New IRS Procedure Softens Rollover Deadline Enforcement

On August 24, 2016, the Internal Revenue Service (IRS) introduced new procedures designed to ease the burden on retirement plan distribution recipients who inadvertently miss the 60-day limit for rolling over plan assets to another retirement plan or IRA. [IRS Revenue Procedure 2016-47](#) explains the circumstances in which individuals who miss the deadline may qualify for a waiver for rolling over those assets.

Currently, a distribution from a qualified retirement plan or IRA qualifies as a tax-free rollover if it was deposited into another workplace retirement plan or IRA by the 60th day after it was received. Under the new procedure, individuals who miss the deadline

can avoid early distribution taxes and penalties if they qualify under one of eleven scenarios. Mitigating circumstances include a check that was misplaced but never cashed, severe damage to the taxpayer's home, the death of a family member, illness of the taxpayer or a family member, incarceration of the taxpayer, and restrictions imposed by a foreign country.

The individual can self-certify that a contribution satisfies one of the conditions via letter to the IRS and to the administrator or trustee of the receiving plan or IRA. (The procedure includes a self-certification letter template.) The IRS has included a provision to authorize a waiver even if the individual does not self-certify on his or her own.



We Can Help

Our firm is ready to provide you with ideas, guidance, and foresight to prepare for the changes ushered in by the DOL's Conflict of Interest Rule. We can also help your employees navigate the 60-day rollover rule and self-certification waiver requirements. If you would like to review any aspect of your retirement plan, we're here to assist you.

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