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# New DOL Rules Expand Definitions of "Fiduciary" and "Advice"

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Last month, the DOL published its long awaited/feared final regulations expanding the definition of “fiduciaries” who provide “advice” (as very broadly defined) relating to retirement plans, IRAs, Health Savings Accounts, Education Savings Accounts, and participants in those arrangements.

In addition to imposing statutory duties and liability exposure on this expanded group of individuals and firms, and expanded categories of advice, the new rules increase significantly the number of hoops through which this group must jump if they wish to be paid (directly or indirectly) for their services.

The primary impact of the new rules is on investment and financial professionals, but it is not an overstatement to say that the new rules require professionals who provide almost any service relating to these arrangements (or to participants in these arrangements) to alter significantly the way they do business.

(Some commentators have suggested – not entirely without justification – that the new rules pose an “existential threat” to solo and small firm financial advisors who may no longer be able to “go it alone” because they don’t have the resources necessary to meet the new requirements.)

A less-mentioned impact of the new rules is how they will impact employer-sponsors of retirement plans.  For example, because retirement plans now will have additional fiduciaries not previously on employers’ radar, employers will need to ensure that these new fiduciaries are prudently selected and monitored and that their fees are reasonable, properly payable under the new rules, and adequately disclosed.  There also will be a new group of fiduciaries that expose employers to liability under ERISA’s co-fiduciary liability rules.

At this stage – the rules begin to become effective on April 10, 2017 – (1) service providers in this space should take immediate steps to analyze and react to the new rules and ensure that any required steps are taken to allow continued receipt of payment for services, and (2) employers should begin to consult with ERISA counsel about the impact of the new rules on their processes, procedures and fiduciary liability.