DOL Fiduciary Rule – Summary of DOL Fact Sheet

Scope

- Under DOL’s proposed definition, any individual receiving 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 for consideration in making a retirement investment decision is a fiduciary. Such decisions can include, but are not limited to, what assets to purchase or sell and whether to rollover from an employer-based plan to an IRA. The fiduciary can be a broker, registered investment adviser, insurance agent, or other type of adviser.

- Basic order-taking is not considered a fiduciary activity

- Carve out for sales pitches to plan fiduciaries with financial expertise
  - Many large employer-based plans are managed by financial experts who are themselves fiduciaries and work with brokers or other advisers to purchase assets or construct a portfolio of investments that the plan offers to plan participants. In such circumstances, the plan fiduciary is under a duty to look out for the participants’ best interest, and understands that if a broker promotes a product, the broker may be trying to sell them something rather than provide advice in their best interest. Accordingly, the proposed rule does not consider such transactions fiduciary investment advice if certain conditions are met.

Complying with Rule

- General Rule: Individuals providing fiduciary investment advice may not receive payments creating conflicts of interest without a prohibited transaction exemption (PTE).

- DOL creates new types of PTEs that are broad and principled based:
  - “Best interest contract exemption”
    - Advisor and firm may receive commissions and revenue sharing under this exemption. To qualify, advisers and firms must enter into a contract with its clients that
      - Commits the firm and adviser to providing advice in the client’s best interest.
      - Warrants that the firm has adopted policies and procedures designed to mitigate conflicts of interest.
        - The firm must warrant that it has identified material conflicts of interest and compensation structures that would encourage individual advisers to make recommendations that are not in clients’ best interests and has adopted measures to mitigate any harmful impact on savers from those conflicts of interest.
      - Clearly and prominently discloses any conflicts of interest that may prevent the adviser from providing advice in the client’s best interests
- “Principles based principal transaction exemption”
  - Adviser may recommend fixed income securities and sell them from the adviser’s own inventory as long as adviser adheres to the exemptions consumer-protective conditions (not defined in the fact sheet)

- “Low-fee exemption”
  - The proposal asks for comment on whether the final exemptions should include a new “low-fee exemption” that would allow firms to accept payments that would otherwise be deemed “conflicted” when recommending the lowest-fee products in a given product class.

**DOL Enforcement**

- The “best interest contract exemption” allows customers to hold fiduciary advisers accountable for providing advice in their best interest through a private right of action for breach of contract.

- The IRS can impose an excise tax on transactions based on conflicted advice that is not eligible for one of the many proposed exemptions.

**Differences from 2010 Rule**

- DOL is issuing proposed exemptions simultaneous with the proposed rule.

- Provides a new, broad, principles-based exemption that can accommodate and adapt to the broad range of evolving business practices.

- Includes a carve-out from fiduciary status for providing investment education to IRA owners.

- Determines who is a fiduciary based not on title, but rather the advice rendered.

- Limits the seller’s carve-out to sales pitches to large plan fiduciaries with financial expertise.

- Excludes valuations or appraisals of the stock held by employee stock ownership plans (ESOPs) from the definition of fiduciary investment advice.

**Timing**

- 75-day notice and comment period

- Public Hearing

- Record reopened for comment after Public Hearing