FEBRUARY 27, 2015

President Announces Plan to Expand Fiduciary Rules Applicable to Investment Advisers

On Monday February 23, 2015, President Obama announced plans for the Department of Labor (DOL) to re-propose rules in the coming months to expand the definition of fiduciary investment advice under ERISA. These rules are intended to crack down on what the President characterizes as "back door payments or hidden fees" that lead to conflicted advice from investment advisers to retirement plan clients. The forthcoming rules will also hold investment advisers to a fiduciary standard, meaning they would be required to put their clients' interests ahead of their own.

The current definition of a fiduciary under ERISA dates back to 1975, when most American workers were covered by defined benefit plans, and so were not directly affected by the performance of plan investments and expenses. The DOL has long sought to update these rules for the current retirement landscape, where participant-directed 401(k) plans and IRAs predominate. According to a report of the President's Council of Economic Advisers, conflicted advice costs Americans billions of dollars each year in retirement savings, resulting in a 1% lower return each year on average for plan participants. Participants may be particularly vulnerable when rolling over accounts from employer plans to an IRA because advisers may steer their clients to investments that earn them higher fees.

The President's announcement was immediately met by opposition from some in the financial community who claim these rules will interfere with their business practices, will increase their fiduciary liability insurance cost, will increase the likelihood of potential lawsuits, and ultimately could drive advisers out of the business. The DOL's new proposal will be subject to notice and public comment before being published as final rules. The DOL previously proposed fiduciary investment advice rules in 2010, which it eventually retracted in 2011 after receiving hundreds of comments from the financial community. While the substance of the new rules has not yet been released, DOL Secretary Thomas Perez promised they will be "very different" from the 2010 proposed rules and would address permissible forms of revenue sharing and sales commissions. Regardless, the proposal will undoubtedly generate controversy and debate in the financial community when it is published.

To see the fact sheet issued by the White House, click here.