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DOL's Latest Update to Fiduciary Rule Focuses on Relationships

by R. Sterling Perkinson

On November 3, 2023, the Department of Labor (DOL) published in the Federal Register its long-awaited proposed update to its "fiduciary rule" that defines when a person becomes a fiduciary to a retirement plan subject to ERISA or an IRA (each, together with their respective fiduciaries, participants, owners and beneficiaries, a "retirement investor") as the result of providing "investment advice" for a fee or other compensation.1 The White House stated that this rule was aimed at "junk fees in retirement products," and targets, among other things, sales of investment products not regulated by the SEC (like a fixed index annuities), as well as advice to roll assets out of 401(k) plans.2

This proposed rule (once finalized) would likely require registered investment advisers, financial institutions, and other retirement plan service providers to review their current offerings to retirement investors and update their compliance procedures, particularly as they relate to 401(k) plan rollovers or sales of annuity products.

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